

INCOME TAX MANUAL

VOLUME I.

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THE GOVERNMENT OF INDIA

(Second Edition.)



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PREFATORY NOTE TO THE FIRST EDITION.

The statutory provisions relating to income-tax are contained in Parts I and II of this Manual. Part I contains the Income-tax Act and the relevant portion of the Finance Act, and Part II contains the rules made under the Act.

Part III contains instructions and notes designed to assist income-tax authorities in the determination of questions which are bound to arise in assessments under the new Act. These instructions and notes have no statutory force but income-tax authorities should conduct assessments in accordance with them until they are cancelled or amended, unless in any particular instance the Income-tax Commissioner should desire to suspend action on any particular instruction pending a representation to the Board of Inland Revenue.

Part IV* contains selected rulings of the High Courts.

In the marginal references " R " means a rule in Part II, " S " a section of the Act in Part I, and " P " a paragraph in Part III of the Manual.

SIMLA; }
The 10th April 1922. }

G. G. SIM,
Member, Board of Inland Revenue.

*Now published separately as Volume II.

NOTICE.

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TABLE OF CONTENTS.

PART I.

THE INDIAN INCOME-TAX ACT, 1922.

PREAMBLE.

SECTIONS.	PAGE.
1. Short title, extent and commencement	1
2. Definitions	1

CHAPTER I.

CHARGE OF INCOME-TAX.

3. Charge of income-tax	4
4. Application of Act	4

CHAPTER II.

INCOME-TAX AUTHORITIES.

5. Income-tax authorities	5
-------------------------------------	---

CHAPTER III.

TAXABLE INCOME.

6. Heads of income chargeable to income-tax	6
7. Salaries	7
8. Interest on securities	7
9. Property	7
10. Business	8
11. Professional earnings	10
12. Other sources	11
13. Method of accounting	11
14. Exemptions of a general nature	11
15. Exemption in the case of life insurances	17
16. Exemptions and exclusions in determining the total income	12
17. Reduction of tax when margin above a certain limit is small	12

CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

SECTIONS.	PAGE.
18. Payment by deduction at source	12
19. Payment in other cases	14
20. Certificate by company to shareholders receiving dividends	14
21. Annual return	14
22. Return of income	14
23. Assessment	15
24. Set-off of loss in computing aggregate income	16
25. Assessment in case of discontinued business	16
26. Change in ownership of business	17
27. Cancellation of assessment when cause is shown	17
28. Penalty for concealment of income	18
29. Notice of demand	18
30. Appeal against assessment under this Act	18
31. Hearing of appeal	19
32. Appeals against orders of Assistant Commissioner	19
33. Power of review	19
34. Income escaping assessment	20
35. Rectification of mistake	20
36. Tax to be calculated to nearest anna	21
37. Power to take evidence on oath, etc.	21
38. Power to call for information	21
39. Power to inspect the register of members of any company	21

CHAPTER V.

LIABILITY IN SPECIAL CASES.

40. Guardians, trustees and agents	22
41. Courts of Wards, etc.	22
42. Non-residents	22
43. Agent to include persons treated as such	23
44. Liability in case of a discontinued firm or partnership	23

CHAPTER V-A.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

44A. Liability to tax of occasional shipping	23
44B. Return of profits and gains	24
44C. Adjustment	24

CHAPTER VI.

RECOVERY OF TAX AND PENALTIES.

SECTIONS.	PAGE.
45. Tax when payable	25
46. Mode and time of recovery	25
47. Recovery of penalties	26

CHAPTER VII.

REFUNDS.

48. Refunds	26
49. Relief in respect of United Kingdom income-tax	27
50. Limitation of claims for refund	27

CHAPTER VIII.

OFFENCES AND PENALTIES.

51. Failure to make payments or deliver returns or statements or allow inspection	27
52. False statement in declaration	28
53. Prosecution to be at instance of Assistant Commissioner	28
54. Disclosure of information by a public servant	28

CHAPTER IX.

SUPER-TAX.

55. Charge of super-tax	29
56. Total income for purposes of super-tax	30
57. Non-resident partners and shareholders	30
58. Application of Act to super-tax	31

CHAPTER X.

MISCELLANEOUS.

59. Power to make rules	31
60. Power to make exemptions, etc.	32
61. Appearance by authorised representative	32
62. Receipts to be given	32
63. Service of notices	32
64. Place of assessment	32
65. Indemnity	33

SECTIONS.	PAGE.
66. Statement of case by Commissioner to High Court .	33
67. Bar of suits in Civil Court	34
68. Repeals	34

THE SCHEDULE.

ENACTMENTS REPEALED.

Extract from Indian Finance Act, 1925	36
Rates of Income-tax	36
Rates of Super-tax	37

PART II.

Rules	39
-----------------	----

PART III. 67

NOTES AND INSTRUCTIONS REGARDING THE INCOME-TAX LAW AND RULES.

PARAS.

1. Extent of the Act.
2. Definition of "agricultural income."
3. Definition of "assessee."
4. Definition of "company."
5. Definition of "previous year."
6. Definition of "Principal Officer."
7. Meaning of the term "local authority."
8. Definition of "public servant."
9. Registered and Unregistered Firms.
10. Definition of "total income."
11. Graduation of income-tax.
12. Definition of "Income."
13. Accounting period to be adopted for determining assessable income.
14. When income earned outside British India is taxable.
15. Is interest on the sterling securities of the Government of India or on the sterling securities issued by English companies carrying on business in British India liable to Indian income-tax?
16. Exemptions.

PARAS.

17. Exemption of income derived from property held under a religious or charitable trust.
18. Exemption of Provident Funds.
19. Meaning of the word "securities" as used in section 4 (3) (iv).
20. Perquisites or benefits not capable of conversion into money.
21. Casual gains.
22. Income-tax Authorities.
23. Salaries.
24. Salaries paid in India but outside British India.
25. Salaries, etc., paid outside India.
26. Interest on securities.
27. Property.
28. Definition of annual value.
29. Deductions allowed in respect of property.
30. Proof of expenditure where deductions are claimed in respect of "property."
31. Property—Insurance deductions.
32. Property—Collection charges.
33. Property—Allowance in respect of vacancies.
34. Property—Limitation of total allowance.
35. Method of accounting for assessing income, profits and gains under sections 10, 11 and 12.
36. Method of accounting regularly employed.
37. Business deductions—General.
38. Business deductions—Irrecoverable loans.
39. Allowance on account of rent on business premises.
40. Allowances on account of repairs of business premises.
41. Allowance in respect of borrowed capital.
42. Business allowances in respect of insurance premia.
43. Allowances in respect of depreciation.
44. Obsolescence allowances.
45. Allowance on account of rates or taxes.
46. Miscellaneous business deductions.
47. Method of converting the net profits of sterling companies into rupees for the purposes of income-tax.
48. Premia on issue of shares.
49. Income from "other sources"—Deductions.
50. Deductions on account of taxes paid.
51. Taxation of a Hindu undivided family.
52. Taxation of a firm.
53. Exemptions on account of life insurance.

PARAS.

54. Tax deducted or collected at source to be included in income.
55. Restriction of income-tax where margin of income above a certain limit is small.
56. Deduction of the tax at source.
57. Deduction at source of tax on "Salaries."
58. Deduction at source of tax on "interest on securities."
59. Deductions at source of tax on dividends declared by Joint Stock Companies.
60. Certificate by a company to shareholders receiving dividends.
61. Annual return of employés.
62. Return of income by companies.
63. Return of income by persons other than companies.
64. Consequences of failure to furnish a return.
65. Consequences of false returns.
66. Production of accounts.
67. Evidence in assessment proceedings other than returns and accounts of assessees.
68. Personal attendance of assessee.
69. Set-off of loss under one head of income against income under another head.
70. New businesses.
71. Businesses closing down.
72. Change in the ownership of a business, profession or vocation.
73. Orders of assessment.
74. Notice of demand.
75. Appeals to Assistant Commissioner.
76. Powers of Assistant Commissioner in dealing with appeals.
77. Appeals to Commissioner.
78. Power of review.
79. Assessment of income which has escaped assessment in previous years.
80. Rectification of mistakes in assessments.
81. Elimination of pies from assessment.
82. Fiduciaries.
83. Non-residents—Income other than from business.
84. Non-residents—Income arising from business in India.
85. British Shipping Companies—Assessment of.
86. Occasional shipping—(Tramp steamers, etc.).
87. Method of recovery of the tax.
88. Refunds of income-tax.
89. Relief from double income-tax.

PARAS.

90. Prosecution for offences.
91. Income-tax records to be kept confidential.
92. Super-tax.
93. Deduction of super-tax at the source.
94. Rules.
95. Composition not permissible.
96. Assessment of income-tax on married women.
97. Method of serving notices or requisitions.
98. The determination of the Income-tax Officer by whom an assessment is to be made.
99. Reference to High Court.
100. Assessment of insurance companies.

(For High Court Rulings see Vol. II.)

PART I.

INCOME-TAX ACT, 1922
(XI OF 1922).

ACT No. XI OF 1922, AS SUBSEQUENTLY AMENDED.

An Act to consolidate and amend the law relating to Income-tax and Super-tax.

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Income-tax Act,
Short title, extent and commencement. 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf, and to all other servants of His Majesty in those dominions.

(3) It shall come into force on the first day of April, 1922.

2. In this Act, unless there is anything repugnant in the
Definitions. subject or context,—

(1) “ agricultural income ” means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of Government as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

P. 1.

P. 2.

- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building;

P. 3. (2) " assessee " means a person by whom Income-tax is payable;

(3) " Assistant Commissioner " means a person appointed to be an Assistant Commissioner of Income-tax under section 5;

(4) " business " includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

*(4A) " The Central Board of Revenue " means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;

(5) " Commissioner " means a person appointed to be a Commissioner of Income-tax under section 5;

P. 4. (6) " company " means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act VII of 1913. of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the †*Central Board of Revenue* may, by general or special order, declare to be a company for the purposes of this Act;

(7) " Income-tax Officer " means a person appointed to be an Income-tax Officer under section 5;

(8) " Magistrate " means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government to try offences against this Act;

* This clause was inserted by the Central Board of Revenue Act, 1924 (IV of 1924).

† Amended by the Central Board of Revenue Act, 1924.

- (9) "person" includes a Hindu undivided family;
 (10) "prescribed" means prescribed by rules made under this Act;

(11) "Previous year" means—

P. 5.

- (a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up :

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or

- (b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf;

(12) "principal officer," used with reference to a local authority or a company or any other public body or *any** association, means—

P. 6, 7.

- (a) the secretary, treasurer, manager or agent of the authority, company, body or association, or

- (b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(13) "public servant" has the same meaning as in the

P. 8.

XLV of 1860. Indian Penal Code;

(14) "registered firm" means a firm constituted under an instrument of partnership specifying the individual shares of the partners of which the prescribed particulars have been registered with the Income-tax Officer in the prescribed manner;

P. 9.

R. 2-6.

(15) "total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16; and

P. 10.

(16) "unregistered firm" means a firm which is not a registered firm.

P. 9.

* Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

CHAPTER I.

CHARGE OF INCOME-TAX.

P. 2, 5,
10, 11,
12, 13,
14.

3. Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at the rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every* *individual, Hindu undivided family, company, firm and other association of individuals.*†

P. 12,
14, 15.

4. (1) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

P. 14.

(2) Profits and gains of a business accruing or arising without British India to a person resident in British India‡ *“shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be profits and gains of the year in which they are so received or brought,”* notwithstanding the fact that they did not so accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose.

Explanation.—Profits or gains accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.

P. 16,
20, 58,

(3) This Act shall not apply to the following classes of income:—

P. 17.

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income

* Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

† NOTE.—The amendments made in Sections 3, 55 and 56 of the Act by the Indian Income-tax (Amendment) Act, 1924 (XI of 1924) shall have effect as if they had been made on the first day of April 1923, and income-tax and super tax shall be deemed to have been chargeable for the year commencing on that date and to be chargeable for the year commencing on the first day of April, 1924, at the rate or rates applicable for those years to the total income of an individual, in respect of the income, profits and gains and of the total income, respectively, of every Association of individuals for which no rate of tax has been otherwise laid down by law.

‡ Amended by the Income-tax (Further Amendment) Act, 1923 (XXVII of 1923).

applied, or finally set apart for application, there-
to.

IX of 1897.

- (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes. **P. 17.**
- (iii) The income of local authorities.
- (iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897, applies,* * * * **P. 18, 19.**
- (v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund. **P. 18.**
- (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit. **P. 20.**
- (vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employé. **P. 21.**
- (viii) Agricultural income. **P. 2.**

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

CHAPTER II.

INCOME-TAX AUTHORITIES.

- 5. (1)** There shall be the following classes of Income-tax **P. 22.**
Income-tax authorities, namely:—
 (a) the Central Board of Revenue,
 (b) Commissioners of Income-tax,
 (c) Assistant Commissioners of Income-tax, and
 (d) Income-tax Officers.

†*

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* Repealed by the Income-tax (Amendment) Act, 1924 (XI of 1924).

† Repealed by the Central Board of Revenue Act, 1924 (IV of 1924).

(3) There shall be a Commissioner of Income-tax for each province who shall be appointed by the Governor General in Council after consideration of any recommendation made by the Local Government in this behalf.

(4) Assistant Commissioners of Income-tax and Income-tax Officers shall, subject to the control of the Governor General in Council, be appointed by the Commissioner of Income-tax by order in writing. They shall perform their functions in respect of such classes of persons and such classes of income and in respect of such areas as the Commissioner of Income-tax may direct. The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively.

(5) The Central Board of Revenue may, by notification in the Gazette of India, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4).

(6) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the province in which they perform their functions.

CHAPTER III.

TAXABLE INCOME.

P. 12. 6. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing namely :—

Heads of income
chargeable to income-
tax.

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.

(iv) Business.

(v) Professional earnings.

(vi) Other sources.

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and

P. 20,
21, 23.

any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer :

**Explanation.*—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

P. 10,
53.

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor General in Council.

P. 1, 14,
24.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company :

P. 15,
26.

Provided that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free :

P. 10.

Provided, further, that the income-tax payable on the interest receivable on any security of a Local Government issued income-tax free shall be payable by that Local Government.

9. (1) The tax shall be payable by an assessee under the head "Property" in respect of the *bonâ fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner,

P. 27,
29, 30.

* Inserted by the Income-tax (Amendment) Act, 1923 (XV of 1923).

other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely :—

- P. 29.** (i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;
- P. 30.** (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one sixth of such value;
- P. 31.** (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction;
- (iv) where the property is subject to a mortgage or charge or to a ground rent, the amount of any interest on such mortgage or charge or of any such ground rent;
- P. 50.** (v) any sums paid on account of land-revenue in respect of the property;
- P. 32.** (vi) in respect of collection charges, a sum not exceeding
R. 7. the prescribed maximum;
- P. 33.** (vii) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case :

P. 34. Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

P. 28. (2) For the purposes of this section, the expression “ annual value ” shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year :

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent. of the total income of the owner.

P. 35, **10.** (1) The tax shall be payable by an assessee under the
43. head “ Business ” in respect of the profits or
Business. gains of any business carried on by him.

P. 35, (2) Such profits or gains shall be computed after making the
37, 38. following allowances, namely :—

P. 39. (i) any rent paid for the premises in which such business is carried on, provided that, when any sub-

stantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;

- (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed; **P. 40.**

- (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid; **P. 41.**

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid; **P. 42.**

- (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof; **P. 40.**

- (vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed: **P. 43.**

R. 8-9.

Provided that—

- (a) the prescribed particulars have been duly furnished;
- (b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depre-

ciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

(c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be; II of 18

P. 44. (vii) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi), or any Act repealed hereby, or the Indian Income-tax Act, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value; II of 18

P. 45, 50. (viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;

P. 37, 46, 48. (ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains.

P. 35. (3) In sub-section (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

P. 35. 11. (1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

P. 50. (2) Such profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, provided that no allowance shall be made on account of any personal expenses of the assessee.

P. 14. (3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.

12. (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads). P. 27.

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee. P. 49, 50.

13. Income, profits and gains shall be computed, for the purposes of sections 10, 11 and 12, in accordance with the method of accounting regularly employed by the assessee : P. 35, 36, 47.

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family. P. 10, 51.

(2) The tax shall not be payable by an assessee in respect of—

(a) any sum which he receives by way of dividend as a shareholder in a company where the profits or gains of the company have been assessed to income-tax; or

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm. P. 9, 52.

15. (1) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act, 1897, applies. P. 10, 53.

IX of 1897.

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect

¹ Repealed by the Income-tax (Amendment) Act, 1924 (XI of 1924).

an insurance on the life of any male member of the family or of the wife of any such member.

P. 10. (3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7, exceed one-sixth of the total income of the assessee.

P. 10. 16. (1) In computing the total income of an assessee sums exempted under the proviso to sub-section (1) of section 7, the provisos to section 8, sub-section (2) of section 14 and section 15, shall be included.

Exemptions and exclusions in determining the total income.

P. 54, 60. (2) For the purposes of sub-section (1), any sum mentioned in clause (a) of sub-section (2) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

P. 10, 55. 17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely:—

Reduction of tax when margin above a certain limit is small.

(a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and

(b) the amount by which his total income exceeds that sum.

CHAPTER IV.

DEDUCTIONS AND ASSESSMENT.

P. 56. 18. (1) Income-tax shall, unless otherwise prescribed in the case of any security of the Government of India, be leviable in advance by deduction at the time of payment in respect of income chargeable under the following heads:—

Payment by deduction at source.

(i) "Salaries"; and

(ii) "Interest on securities."

P. 23, 53, 57. (2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment,

deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head :

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

*(2a) Notwithstanding anything hereinbefore contained, for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head ' Salaries ' which is payable to the assessee out of India by or on behalf of Government, and the value in rupees of such income shall be calculated at the prescribed rate of exchange.

R. 11A.

(3) The person responsible for paying any income chargeable under the head " Interest on securities " shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate.

**P. 21,
26, 58.**

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

P. 54.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment if any, made for the following year under this Act :

P. 56.

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Central Board of Revenue directs.

R. 10-12.

(7) If any such person does not deduct and pay the tax as required by this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

P. 56.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

- P. 58, 88. (9) Every person deducting income-tax in accordance with the provisions of sub-section (3) shall, at the time of payment of interest, furnish to the person to whom the interest is paid a certificate to the effect that income-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.
- R. 13.

19. In the case of income chargeable under any other heads than those mentioned in sub-section (1) of section 18, and in any case where income-tax has not been deducted in accordance with the provisions of that section, the tax shall be payable by the assessee direct.
- P. 56. Payment in other cases.

- P. 60, 88. 20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.
- R. 14. Certificate by company to shareholders receiving dividends.

- R. 15. 21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing—
- P. 7, 61. Annual return.
- R. 17.

- (a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;
- R. 16. (b) the amount of the income so received by each such person, and the time or times at which the same was paid;
- (c) the amount deducted in respect of income-tax from the income of each such person.

- P. 10, 62, 64, 65. 22. (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year:
- R. 18. Return of income.

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

P. 10,
63, 64.

R. 19.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

P. 64.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require :

P. 66,
84.

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

23. (1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

Assessment.

P. 10,
73.

(2) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

P. 67,
68.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require,

P. 10.

on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

**P. 66,
67.** (4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment.

**P. 34,
69.** 24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set-off against his income, profits or gains under any other head in that year.

(2) Where the assessee is a registered firm, and the loss sustained cannot wholly be set-off under sub-section (1), any member of such firm shall be entitled to have set-off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set-off as is proportionate to his share in the firm.

**P. 13,
71.** 25. (1) Where any business, profession or vocation ¹on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

P. 71. (2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

¹ Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

(3) Where any business, profession or vocation^{1*} *
 * on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

VI of 1918.

P. 13,
71.

(4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

26. Where any change occurs in the constitution of a firm
 Change in ownership or where any person has succeeded to any busi-
 of business. ness, profession or vocation, the assessment shall be made on the firm as constituted, or on the person engaged in the business, profession or vocation, as the case may be, at the time of the making of the assessment.

P. 71,
72.

27. Where an assessee or, in the case of a company, the prin-
 Cancellation of as cipal officer thereof, within one month from
 sessment when cause the service of a notice of demand issued as
 is shown. hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

P. 64.

¹ Repealed by the Income-tax (Amendment) Act, 1924 (XI of 1924).

P. 64,
65.

28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income, or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income :

Provided that no such order shall be made, unless the assessee has been heard, or has been given a reasonable opportunity of being heard :

Provided, further, that no prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(2) An Assistant Commissioner or a Commissioner who has made an order under sub-section (1) shall forthwith send a copy of the same to the Income-tax Officer.

P. 74.

29. When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

R. 20.

P. 36,
64, 66,
75.

30. (1) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25 or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order :

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to, or of the date of the refusal to make a fresh assessment under section 27, as the case may be; but the

Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

P. 75.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

R. 21.

31. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from

P. 76,
77.

Hearing of appeal.

time to time adjourn the hearing.

(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,

or, in the cases of an order under sub-section (2) of section 25 or section 28.

(c) confirm, cancel or vary such order :

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of the making of such order.

P. 77.

Appeals against
orders of Assistant
Commissioner.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

R. 22.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

33. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subor-

P. 78.

Power of review.

dinate to him or by himself when exercising the powers of an Assistant Commissioner under sub-section (4) of section 5.

(2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.

P. 79.

34. If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

P. 80.

35. (1) The Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the assessment, and shall within the like period rectify any such mistake which has been brought to his notice by such assessee:

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Income-tax Officer has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued

under section 29, and the provisions of this Act shall apply accordingly.

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna. **P. 81.**

Tax to be calculated to nearest anna.

37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :— **P. 67, 80.**

Power to take evidence on oath, etc.

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses;

and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code. **P. 67.**

XLV of 1860.

38. The Income-tax Officer or Assistant Commissioner may,

Power to call for information. for the purposes of this Act,—

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian; or agent, and of their addresses.

39. The Income-tax Officer or Assistant Commissioner, or **P. 67.**

Power to inspect the register of members of any company.

any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

CHAPTER V.

LIABILITY IN SPECIAL CASES.

P. 82. **40.** In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

P. 82. **41.** In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amounts as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

P. 14,
50, 83,
84.
R. 33. **42. (1)** In the case of any person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

P. 87. Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India.

P. 84. **(2)** Where a person not resident in British India, and not being a British subject or a firm or company constituted within

His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent :

P. 84.

Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

44. Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

P. 71.

CHAPTER VA.*

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

44A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person.

Liability to tax of occasional shipping.

* Inserted by the Income-tax (Further Amendment) Act, 1923 (XXVII of 1923).

who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

P. 86.

44B. (1) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

44C. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be."

CHAPTER VI.

RECOVERY OF TAX AND PENALTIES.

- 45.** Any amount specified as payable in a notice of demand **P. 87.**
 Tax when payable. under section 29 or an order under section 31
 or section 32 or section 33, shall be paid with-
 in the time, at the place and to the person mentioned in the notice
 or order, or if a time is not so mentioned, then on or before
 the first day of the second month following the date of the service
 of the notice or order, and any assessee failing so to pay shall be
 deemed to be in default, provided that, when an assessee has
 presented an appeal under section 30, the Income-tax Officer may
 in his discretion treat the assessee as not being in default as long
 as such appeal is undisposed of.
- 46.** (1) When an assessee is in default in making a payment **P. 87.**
 Mode and time of of income-tax, the Income-tax Officer may in
 recovery. his discretion direct that, in addition to the
 amount of the arrears, a sum not exceeding that amount shall
 be recovered from the assessee by way of penalty.
- (2) The Income-tax Officer may forward to the Collector a **P. 87.**
 certificate under his signature specifying the amount of arrears
 due from an assessee, and the Collector, on receipt of such certi-
 ficate, shall proceed to recover from such assessee the amount
 specified therein as if it were an arrear of land-revenue.
- (3) In any area, with respect to which the Commissioner has **P. 87.**
 directed that any arrears may be recovered by any process en-
 forceable for the recovery of an arrear of any municipal tax or
 local rate imposed under any enactment for the time being in
 force in any part of the province, the Income-tax Officer may
 proceed to recover the amount due by such process.
- (4) The Commissioner may direct by what authority any **P. 87.**
 powers or duties incident under any such enactment as aforesaid
 to the enforcement of any process for the recovery of a municip-
 al tax or local rate shall be exercised or performed when that
 process is employed under sub-section (3).
- (5) If any assessee is in receipt of any income chargeable **P. 87.**
 under the head "Salaries," the Income-tax Officer may require
 any person paying the same to deduct from any payment sub-
 sequent to the date of such requisition any arrears due from
 such assessee, and such person shall comply with any such requi-
 sition and shall pay the sums so deducted to the credit of the.

Government of India, or as the Central Board of Revenue directs.

(6) The Local Government may direct with respect to any specified area, that income-tax shall be recovered therein, with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

P. 87. (7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

P. 87. 47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

Recovery of penalties.

CHAPTER VII.

REFUNDS.

P. 10, 60, 88. 48. (1) If a shareholder in a company who has received any dividend therefrom satisfies the Income-tax Officer that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, he shall, on production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates.

P. 9, 10, 52, 69, 88. (2) If a member of a registered firm satisfies the Income-tax Officer that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates.

P. 10, 56, 58, 88. (3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18, satisfies the

Income-tax Officer that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates.

49. (1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax and the rate at which he was entitled to, and obtained, relief under that section:

Provided that the rate at which the refund is to be given shall not exceed one-half of the Indian rate of tax.

(2) In sub-section (1)—

(a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged;

(c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

50. No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered.

Limitation of claims for refund.

P. 89.

P. 88.

CHAPTER VIII.

OFFENCES AND PENALTIES.

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse—

P. 56.

(a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46;

P. 61, 62,
63, 64.
P. 66.

- (b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished;
- (c) to furnish in due time any of the returns mentioned in section 21, section 22, or section 38;
- (d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice;
- (e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

P. 65, 75.

52. If a person makes a statement in a verification mentioned in section 22, or sub-section (3) of section 30, or sub-section (2) of section 32 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

XLV of I

P. 65, 90.

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

P. 8, 91.

54. (1) All particulars contained in any statement made, returned furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding, relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

I of 1872

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with impri-

sonment which may extend to six months, and shall also be liable to fine :

Provided that nothing in this section shall apply to the disclosure—

XLV of 1860.

- (a) of any such particulars for the purposes of a prosecution under section 193 of the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or
- (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or
- (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or
- (d) of such facts to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act :

10 & 11 Geo.
V, Ch. 18.

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX.

SUPER-TAX.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any **individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm,*† an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature.

P. 2, 9,
10, 11,
92.

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be pay-

P. 52,
92.

* Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

† NOTE.—See note to Section 5.

able by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

P. 10, **56.** Subject to the provisions of this Chapter, the total in-
92. Total income for come of any **individual, Hindu undivided*
purposes of super-tax. *family, company, unregistered firm or other*
association of individuals, shall, for the purposes of super-tax,
 be the total income as assessed for the purposes of income-tax,
 and where an assessment of total income has become final and
 conclusive for the purposes of income-tax for any year, the
 assessment shall also be final and conclusive for the purposes
 of super-tax for the same year.

† Provided that, in computing the total income of a mem-
 ber of a registered firm, where any change occurs in the con-
 stitution of the firm, the profits or gains of the firm during the
 previous year shall be deemed to have been received in that
 year by the members of the firm as constituted at the time of
 the making of the assessment to super-tax in proportion to their
 shares in the firm at that time.

P. 93. **57. (1)** In the case of any assessee residing out of British
Non-resident part- India who is a member of a registered firm,
ners and shareholders. and whose share of the profits from such firm
 is liable to super-tax, the remaining members of such firm who
 are resident in British India shall be jointly and severally
 liable to pay the super-tax due from the non-resident member in
 respect of such share.

(2) Where any assessee who is liable to pay super-tax on
 the amount of the dividends receivable by him from any company
 is, to the knowledge of the principal officer of the company, resi-
 ding out of British India, the principal officer shall be liable to
 pay the super-tax due by such non-resident person in respect of
 the dividends received by him from the company, and shall have
 power to deduct the amount of such super-tax from the amount
 payable by the company to such assessee.

(3) Where any person pays any tax under the provisions of
 this section on account of an assessee who is residing out of Bri-
 tish India, credit shall be given therefor in determining the
 amount of the tax to be payable by any agent of such non-
 resident assessee under the provisions of sections 42 and 43.

* Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

† Inserted by the Income-tax (Amendment) Act, 1925 (V of 1925).

58. (1) All the provisions of this Act, except section 3, the **P. 88,**
Application of Act to super-tax. proviso to sub-section (1) of section 7, the pro- **92.**
 visos to section 8, sub-section (2) of section
 14, and sections 15, 17, 18, 19, 20, 21 and 48 shall apply; so far
 as may be, to the charge, assessment, collection and recovery
 of super-tax.

(2) Save as provided in section 57, super-tax shall be pay-
 able by the assessee direct.

CHAPTER X.

MISCELLANEOUS.

59. (1) The Central Board of Revenue may, subject to the **P. 94.**
Power to make rules. control of the Governor General in Council,
 make rules for carrying out the purposes of
 this Act and for the ascertainment and determination of any
 class of income. Such rules may be made for the whole of
 British India or for such part thereof as may be specified.

(2) Without prejudice to the generality of the foregoing
 power, such rules may—

(a) prescribe the manner in which, and the procedure
 by which, the income, profits and gains shall be
 arrived at in the case of—

(i) incomes derived in part from agriculture and **R. 23—**
 in part from business; **24.**

(ii) insurance companies; **P. 100.**
R. 25—

(iii) persons residing out of British India; **32 & 35.**
R. 33—
35.

(b) prescribed the procedure to be followed on applica- **R. 36—**
 tions for refunds; **40.**

(c) provide for such arrangements with His Majesty's
 Government as may be necessary to enable the ap-
 propriate relief to be granted under section 27 of
 the Finance Act, 1920, or under section 49 of this
 Act;

(d) prescribe the year which, for the purpose of relief un-
 der section 49, is to be taken as corresponding to

the year of assessment for the purposes of section 27 of the Finance Act, 1920; and

10 & 11 Ge
V, Ch. 18.

(e) provide for any matter which by this Act is to be prescribed.

P. 94. (3) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(4) Rules made under this section shall be published in the Gazette of India, and shall thereupon have effect as if enacted in this Act.

P. 16. 60. The Governor General in Council may, by notification in the Gazette of India, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

P. 68. 61. Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceedings, under this Act, may attend either in person or by any person authorised by him in writing in this behalf.

62. A receipt shall be given for any money paid or recovered under this Act.

P. 97. 63. (1) A notice or requisition under this Act may be served on the person therein-named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

V of 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family *and, in the case of any, other association of individuals, be addressed to the principal officer thereof.

P. 98. 64. (1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income-tax Officer of the area in which his principal place of business is situate.

(2) In all other cases an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

* Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue :

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

P. 22,
61.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Indemnity.

66. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

P. 99.

(2) Within one month of the passing of an order under section 31 or section 32, the assessee in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order, and the Commissioner shall, within one month of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court :

Provided that if in exercise of his power of review under section 33, the Commissioner decides the question, the assessee may withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply **within six months*

* Amended by the Income-tax (Amendment) Act, 1924 (XI of 1924).

from the date on which he is served with notice of the refusal to the High Court, and the High Court if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised hereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

P. 87. (7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act.

68. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof :

Repeals.

Provided that such repeal shall not affect the liability of any person to pay any sum due from him or any existing right of refund under any of the said enactments :

Provided, further, that the provisions of section 19 of the **P. 13.**
VII of 1918. Indian Income-tax Act, 1918, shall apply, so far as may be,* to *income-tax leviable under that Act in respect of the year beginning on the first day of April, 1921, and to super-tax chargeable under the Super-tax Act, 1920, in that year; and* where an adjustment shall be made under the provisions of section 19 of the said Act, the provisions of this Act regarding the procedure for the assessment and recovery of income-tax shall apply as if such adjustment were an assessment made under this Act.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 68.)

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
1918	VII	The Indian Income-tax Act, 1918	The whole.
1919	IV	The Indian Income-tax (Amendment) Act, 1919.	The whole.
„	XVIII	The Repealing and Amending Act, 1919.	So much of the First Schedule as relates to the Indian Income-tax Act, 1918.
1920	XVII	The Indian Income-tax (Amendment) Act, 1920.	The whole.
„	XIX	The Super-tax Act, 1920.	The whole.
„	XXXI	The Repealing and Amending Act, 1920.	So much of the First Schedule as relates to the Super-tax Act, 1920.
„	XLIV	The Indian Income-tax (Amendment No. 2) Act, 1920.	The whole.

Amended by the Income-tax (Amendment) Act, 1923 (XV of 1923).

Extract from the Indian Finance Act, 1925.

* * * * *

1. (1) This Act may be called the Indian Finance Act, 1925.

* * * * *

7. (1) Income-tax for the year beginning on the first day of April 1925, shall be charged at the rates specified in Part I of the third Schedule.

(2) The rates of super-tax for the year beginning on the first day of April 1925, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the third Schedule.

(3) For the purposes of the third Schedule "total income" means total income as determined, for the purposes of income-tax or super-tax as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

* * * * *

SCHEDULE III.

(See section 7.)

PART I.

Rates of Income-tax.

	Rate.
A. In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(1) When the total income is less than ₹2,000	<i>Nil.</i>
(2) When the total income is ₹2,000 or upwards, but is less than ₹5,000.	Five pies in the rupee.
(3) When the total income is ₹5,000 or upwards, but is less than ₹10,000.	Six pies in the rupee.
(4) When the total income is ₹10,000 or upwards, but is less than ₹20,000.	Nine pies in the rupee.
(5) When the total income is ₹20,000 or upwards, but is less than ₹30,000.	One anna in the rupee.
(6) When the total income is ₹30,000 or upwards, but is less than ₹40,000.	One anna and three pies in the rupee.
(7) When the total income is ₹40,000 or upwards	One anna and six pies in the rupee.
B. In the case of every company, and every registered firm whatever its total income.	One anna and six pies in the rupee.

PART II.

Rates of Super-tax.

In respect of the excess over fifty thousand rupees of total income :—

	Rate.
(1) in the case of every company	One anna in the rupee.
(2) (a) in the case of every Hindu undivided family—	
(i) in respect of the first twenty-five thousand rupees of the excess.	<i>Nil.</i>
(ii) for every rupee of the next twenty-five thousand rupees of such excess.	One anna in the rupee.
(b) in the case of every individual, unregistered firm and other association of individuals not being a registered firm or a company for every rupee of the first fifty thousand rupees of such excess.	One anna in the rupee.
(c) in the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(i) for every rupee of the second fifty thousand rupees of such excess,	One and a half annas in the rupee.
(ii) for every rupee of the next fifty thousand rupees of such excess,	Two annas in the rupee.
(iii) for every rupee of the next fifty thousand rupees of such excess,	Two and a half annas in the rupee.
(iv) for every rupee of the next fifty thousand rupees of such excess,	Three annas in the rupee.
(v) for every rupee of the next fifty thousand rupees of such excess,	Three and a half annas in the rupee.
(vi) for every rupee of the next fifty thousand rupees of such excess,	Four annas in the rupee.
(vii) for every rupee of the next fifty thousand rupees of such excess,	Four and a half annas in the rupee.
(viii) for every rupee of the next fifty thousand rupees of such excess,	Five annas in the rupee.
(ix) for every rupee of the next fifty thousand rupees of such excess,	Five and a half annas in the rupee.
(x) for every rupee of the remainder of the excess.	Six annas in the rupee.

PART II.
RULES.

BOARD OF INLAND REVENUE.

Notification No. 3-I.T., dated the 1st April 1922 as subsequently amended.

In exercise of the powers conferred by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Board of Inland Revenue has made the following rules, namely:—

1. These rules may be called the Indian Income-tax Rules, 1922.

2. Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause (14) of section 2 of the Indian Income-tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income-tax Officer the particulars contained in the said instrument on application in this behalf made by the partners or by any of them on or before the date on which a return is due under sub-section (2) of section 22 of the Act.

P. 9.

3. The application referred to in rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof: provided that if the Income-tax Officer is satisfied that for some sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by one of the partners to be a correct copy, and in such a case the application shall be accompanied by a duplicate copy.

FORM I.

Form of application for registration of a firm under section 2 (14) of the Indian Income-tax Act, 1922.

To

THE INCOME-TAX OFFICER,

Dated

19 .

I _____ beg to apply for the registration of $\frac{mv}{our}$ firm under section 2 (14) of the Indian Income-tax Act, 1922.

2. $\frac{\text{The original}}{\text{A certified copy}}$ of the instrument of partnership under which the firm is constituted specifying the individual shares of the partners together with $\frac{\text{a copy}}{\text{duplicate copy}}$ is enclosed. The prescribed particulars are given below.

3. $\frac{I}{We}$ do hereby certify that the profits for the year ending, have been or will be actually divided or credited in accordance with the shares shown in this partnership deed.

Signature_____

Address_____

Name and address of the firm.	Names of the partners in the firm with the share of each in the business.	Date on which the instrument of partnership was executed.	Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's office.	REMARKS.

$\frac{I}{We}$ _____do hereby certify that the information given above is correct.

Signature(s)_____

4. (1) On the production of the original instrument of partnership or on the acceptance by the Income-tax Officer of a certified copy thereof, the Income-tax Officer shall enter in writing at the foot of the instrument or copy, as the case may be, the following certificate, namely :—

“ This instrument of partnership (or this certified copy of an instrument of partnership) has this day been registered with me, the Income-tax Officer for _____ in the province of _____ under clause (14) of section 2 of the Indian Income-tax Act, 1922. This certificate of registration has effect from the _____ day of April 19 ____.”

(2) The certificate shall be signed and dated by the Income-tax Officer who shall thereupon return to the applicant the instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or duplicate copy thereof.

5. The certificate of registration granted under rule 4 shall have effect from the date of registration.

6. A certificate of registration granted under rule 4 shall have effect up to the end of the financial year in which it is granted, but shall be renewed by the Income-tax Officer from year to year on application made to him in that behalf on or before the date on which the return under sub-section (2) of section 22 of the Act is due, and accompanied by a certificate signed by one of the partners of the firm that the constitution of the firm as specified in the instrument of partnership remains unaltered.

7. Under section 9 (1) (vi) of the Act, the sum to be allowed in respect of collection charges shall not exceed 6 per cent. of the annual value of the property.

P. 32.

8. An allowance under section 10 (2) (vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement :—

P. 43.

Class of buildings, machinery, plant or furniture.	Rate.	REMARKS.
	Percentage on prime cost.	
<i>1. Buildings* :—</i>		* Double these rates may be allowed for buildings used in industries which cause special deterioration, such as chemical works, soap and candle works, paper mills, and tanneries.
(1) First class substantial buildings of selected materials.	2½	
(2) Buildings of less substantial construction . . .	5	
(3) Purely temporary erections such as wooden structures.	10	
<i>2. Machinery Plant or Furniture† :—</i>		† The special rates for electrical machinery given below may be adopted, at firm's option, for that portion of their machinery.
General rate	5	

Class of buildings, machinery, plant or furniture.	Rate.	REMARKS.
	Percentage on prime cost.	
Rates sanctioned for special industries :—		
Flour Mills, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Aerating Gas Factories, Match Factories.	6½	
Paper Mills, Ship Building and Engineering Works, Iron and Brass Foundries, Electrical Engineering Works, Motor Car Repairing Works, Galvanizing Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, Soap and Candle Works, Lime Works, Saw Mills, Dyeing and Bleaching Works, Furniture and Plant in hotels and boarding houses, Cement Works using rotary kilns.	7½	
Plant used in connection with brick manufacture, tile making machinery, optical machinery, glass factories, surgical and dental instruments, Telephone Companies, Mines and Quarries.	10	
Sewing machines for canvas or leather	12½	
Motor cars used solely for the purpose of business	15	
Motor taxis, motor lorries and motor buses	20	
<i>3. Electrical Machinery—</i>		
(a) Batteries	15	
(b) Other electrical machinery, including electrical generators, motors (other than tramway motors), switchgear and instruments, transformers and other stationary plant and wiring and fittings of electric light and fan installations.	7½	
(c) Underground cables and wires	6	
(d) Overhead cables and wires	2½	
<i>4. Hydro-Electric concerns—</i>		
Hydraulic works, pipe lines, sluices, and all other items not otherwise provided for in this statement.	2½	

Class of buildings, machinery, plant or furniture.	Rate.	REMARKS.
	Percentage on prime cost.	
5. <i>Electric tramways—</i>		
<i>Permanent way—</i>		
(a) Not exceeding 50,000 car miles per mile of track per annum.	6 $\frac{1}{4}$	
(b) Exceeding 50,000 and not exceeding 75,000 car miles per mile of track per annum.	7 $\frac{1}{7}$	
(c) Exceeding 75,000 and not exceeding 125,000 car miles per mile of track per annum.	8 $\frac{1}{3}$	
Cars—car trucks, car bodies, electrical equipment and motors.	7	
General plant, machinery and tools	5	
6. <i>Mineral Oil Companies—</i>		
A. Refineries—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	10	
B. Field operations—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	7 $\frac{1}{2}$	
Except for the following items:—		
(1) Below ground—All to be charged to revenue	
(2) Above ground—		
(a) Portable boilers, drilling tools, well-head tank, rigs, etc.	25	
(b) Storage tanks	10	

Class of buildings, machinery, plant or furniture.	Rate.	REMARKS.
6. <i>Mineral Oil Companies</i> —contd. Except for the following items:—contd. (2) Above ground—contd. (c) Pipe lines—	Percentage on prime cost.	
(i) Fixed boilers	10	
(ii) Prime movers	7½	
(iii) Pipe line	10	
7. <i>Ships</i> —		
(1) Ocean—		
(a) Steam	5	
(b) Sail or tug	4	
(2) Inland—		
(a) Steamers (over 120 ft. in length) .	5	
(b) Steamers including cargo launches (120 ft. in length and under)	6	
(c) Tug boats	7½	
(d) Iron or Steel flats for cargo, etc. .	5	
(e) Wooden cargo boats up to 50 tons capacity	10	
(f) Wooden cargo boats over 50 tons capacity	7½	
8. <i>Mines and Quarries</i> —		
(1) Railway sidings* (excluding rails)	5	* Depreciation on rails used for tramways and sidings, and in inclines where the rails are the pro- perty of the assessee, is allowed at 10 per cent. under item 2 above (plant used in connection with Mines and Qua- rries in addition to any depre- ciation allowance on the cost of constructing the tramways sidings or inclines.
(2) Shafts	5	
(3) Inclines*	5	
(4) Tramways on the surface* (excluding rails) .	10	

9. For the purpose of obtaining an allowance for depreciation under proviso (a) to section 10 (2) (vi) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the following form :—

P. 43.

Description of buildings, machinery, plant, or furniture.	Capital expenditure during the year for additions, alterations, improvements and extensions.	Date from which used for the purposes of the business	Particulars (including original cost, depreciation allowed, and value realised by sale or scrap value) of obsolete machinery, plant or furniture sold or discarded during the year, with dates on which first brought into use and sold or discarded.	REMARKS.
1	2	3	4	5

I—declare that to the best of my information and belief the buildings, machinery, plant and furniture described in column 1 of the above statement were the property of—during the year ended—and that the particulars entered in the statement are correct and complete.

Place—

Signature—

Date—

Designation—

10. All sums deducted in accordance with the provisions of section 18 of the Act shall be paid by the person making the deduction to the credit of the Government of India on the same day as the deduction is made in the case of deduction by or on behalf of Government, and within one week from the date of such deduction in all other cases :

P. 56.

Provided that the Income-tax Officer may, in special cases, and with the approval of the Assistant Commissioner, permit a local authority, company, public body or association, or a private employer to pay the income-tax deducted from salaries

quarterly on June 15th, September 15th, December 15th, and March 15th.

P. 56.

11. In the case of income chargeable under the head 'Salaries,' where deduction is not made by or on behalf of Government, the person paying the salary shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct and shall send therewith a statement showing the name of the employé from whose salary the tax has been deducted, the period for which the salary has been paid, the gross amount of the salary, the deduction for a provident fund or insurance premia, and the amount of tax deducted.

11-A. The prescribed rate of exchange for the calculation of the value in rupees of any income chargeable under the head 'Salaries' which is payable to the assessee out of India by or on behalf of Government shall be the rate notified by the Controller of the Currency in respect of the recovery of contributions to the Indian Civil Service Fund for the month in which such income is payable.

P. 56.

12. In the case of income chargeable under the head 'Interest on securities,' where the deduction is not made by or on behalf of Government, the person responsible for paying the interest shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct with a statement showing the following particulars :—

- (i) Description of securities.
- (ii) Numbers of securities.
- (iii) Dates of securities.
- (iv) Amounts of securities.
- (v) Period for which interest is drawn.
- (vi) Amount of interest, and
- (vii) Amount of tax.

P. 58.

13. The certificate to be furnished under section 18 (9) of the Act by any person paying interest chargeable to income-tax on any security of the Government of India or of a local Government shall be in the following form :—

(¹) This number also appears in the interest cages on the

Draft No. (¹) _____

Certified that Rs. _____ being income-tax at the rate of—pies per rupee has been deducted by draft of this

date from Rs. _____ being the amount of interest back of the Securities.

for Rs.

on⁽²⁾ _____ for Rs. _____ standing in the name ⁽²⁾ Name of Security.

for Rs.

of _____

_____ 192 . *Superintendent or Principal Officer.*

To be signed by claimant.

I hereby declare that the securities on which interest as above specified has been received were my own property and were in the possession of _____

_____ at the time when income-tax was deducted.

Signature _____

Date _____

(N.B.—The securities to be produced when required in support of any claim.)

“ 13A. The certificate to be furnished under section 18 (9) of the Act by the person paying any interest on debentures or other securities for money issued by or on behalf of a local authority or a company shall be in the following form:—

“ Name of $\frac{\text{Local Authority}}{\text{Company}}$ _____

Address _____

To _____

$\frac{I}{We}$ hereby certify that Rs. _____ being income-tax at the rate of _____ pies per rupee has been deducted from Rs. _____ being the amount of interest at the rate of _____ per cent. per annum due* on debentures Nos. _____ of Rs. _____ each of the _____ † and that it has been or will, within the prescribed period, be paid by $\frac{re}{us}$ to the Government of India, at _____

* The date interest is payable.
† Here enter the name of the local authority or the company.

Principal officer or Managing Agents.

_____ 192 .

(To be signed by claimant.)

I hereby declare that the securities on which interest as above specified has been received were my own property and were in the possession of _____ at the time when income-tax was deducted.

Signature_____

Date_____

(N.B.—The securities to be produced when required in support of any claim.)”

P. 60.

14. The certificate to be furnished by the principal officer of a company under section 20 shall be in the following form :—

(Name of Company)_____

(Address of Company)_____

Date_____

(¹) Or Dividend and bonus.

(²) Year or half year, as the case may be

(³) Here enter whether (⁵) free of income-tax or not.

(⁴) Here enter number and description of shares.

(⁵) Here specify number and nature of meeting.

(⁶) Here enter date.

WARRANT for Rs. _____, being dividend (¹) of _____ per cent. for the (²) _____ ending on the _____ day of _____ 19 _____, (³) _____ on (⁴) _____ shares in this company, registered in the name of _____ This dividend was declared at the meeting held on the (⁶) _____ 192 .

I $\frac{1}{We}$ hereby certify that income-tax $\frac{\text{on the entire}}{\text{on per cent. of the}}$ profits and gains of the company, of which this dividend forms a part, has been, or will be, duly paid by $\frac{me}{us}$ to the Government of India.

Signature_____

Office_____

(To be signed by the claimant.)

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared and were in the possession of

*Signature*_____

*Date*_____

15. The returns for Government officers under section 21 of the Act shall be prepared and submitted to the Income-tax Officer by :—

P. 61.

- (a) Civil Audit Officers for all gazetted officers and others who draw their pay from audit offices on separate bills; and also for all pensioners who draw their pensions from audit offices.
- (b) Treasury officers for all gazetted officers and others who draw their pay from treasuries on separate bills without countersignature; and also for all pensioners who draw their pensions from treasuries.
- (c) Heads of Civil or Military offices for all non-gazetted officers whose pay is drawn on establishment bills or on bills countersigned by the head of office.
- (d) Forest disbursing officers and Public Works Department disbursing officers in cases where direct payment from treasuries is not made, for themselves and their establishments.
- (e) Head postmasters for (i) themselves, their gazetted subordinates and the establishments of which the establishment pay bills are prepared by them and (ii) gazetted supervising and controlling officers of whose headquarters post office they are in charge; Head Record Clerks, Railway Mail Service, for themselves and all the staff whose pay is drawn in their establishment pay bills; the Disbursing Officers in the case of the Administrative and the Audit offices.
- (f) Controllers of Military Accounts (including Divisional Military Supply, Marine, Field and War Controllers) for all gazetted military officers under their audit.

(g) Disbursing officers in the Military Works Department for themselves and their establishments.

(h) Chief Examiners of Accounts or Chief Auditors of Railways concerned for all railway employes under their audit.

P. 61. 16. The minimum income under the head "Salaries" referred to in section 21 (a), shall be Rs. 2,000 per annum.

P. 61. 17. The return to be delivered to the Income-tax Officer under section 21 of the Act shall be in the following form :—

Serial number.	Name of person.	Postal address of residence.	Appointment or nature of employment.	Total amount of salary, wages, annuity or pension paid during the year ending on the 31st March 19 .	Amount of gratuity, fees, commissions perquisites, (including rent-free quarters) or profits in lieu of or in addition to salary or wages.	Total of columns 5 and 6.	Deductions, sections 7 (1) proviso, section 15.	Net amount chargeable.	Amount of tax payable.	Reduction under section 17.	Amount of tax deducted.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13

I certify that the above statement contains a complete list of the total amounts paid by _____ to all persons who were receiving income on the 31st day of March 19 ____ at the rate of Rs. 2,000 per annum, or have received during the year ended on that day not less than Rs. 2,000 in respect of salary, wages, annuity, pension, gratuity, fees, commissions, perquisites, or profits in lieu of or in addition to salary or wages, and that all the particulars stated are correct.

Signature of person by whom the return is delivered.

Date

18. The return of total income of companies required under section 22 (1) shall be in the following form and shall be accompanied by a copy of the profit and loss account referred to therein:—

P. 62.

Income, profits or gains from business, trade, commerce.

	R	A.	P.
Income, profits, or gains as per profit and loss account for the year ended 192			
Add any amount debited in the accounts in respect of—			
1. Reserve for bad debts			
2. Sums carried to reserve for provident or other funds			
3. Expenditure of the nature of charity or presents			
4. Expenditure of the nature of capital			
5. Income-tax or Super-tax			
6. Rental value of property owned and occupied			
7. Cost of additions to, or alterations, extensions, improvements of, any of the assets of the business			
8. Interest on reserve or other funds			
9. Losses sustained in former years			
10. Losses recoverable under an insurance or contract of indemnity			
11. Depreciation of any of the assets of the business			
12. Expenses not incurred solely for the purpose of earning the profits			
TOTAL			
Deduct — Any profits included in the accounts already charged to Indian income- tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free			
BALANCE			

If the company owns any property not occupied for the purposes of the business a statement in the form prescribed in Schedule A to rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

Declaration.

I, the _____ [Secretary, etc., (see section 2 (12) of the Act)] of the _____ (name of Company) declare that the information against each head in this return is correctly given as shown in the books of the Company as also in the accounts which have been duly audited by the auditors of the Company and which have been adopted by the shareholders of the Company.

(Signature) _____

(Designation) _____

Dated _____ 19 .

P. 63.

19. The return of total income for individuals, firms and Hindu undivided families required under section 22 (2) shall be in the following form :—

Statement of total income during the previous year.

1	2	3
Sources of Income.	Amount of profits or gains or income during the previous year.	Tax already charged on the income.
	Rs.	Rs.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters) or profits received in lieu of, or in addition to, salary or wages [See note (1)]		
2. Interest on Securities (including debentures) already taxed „ (2)		
3. Interest on Securities of the Government of India or of local Governments declared to be income-tax free „ (3)		
4. Property as shown in detail in Schedule A „ (4)		
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5) „ (5)		
6. Profession „ (6)		
7. Dividends from Companies „ (7)		

Statement of total income during the previous year—contd.

1	2	3
Sources of Income.	Amount of profits or gains or income during the previous year.	Tax already charged on the income.
	Rs.	Rs.
8. Interest on mortgages, loans, fixed deposits, current accounts, etc.		
9. Ground Rent		
10. Any source other than those mentioned above including any income earned in partnership with others [See note (8)]		
Total .		
Deductions claimed on account of contributions to provident fund, etc., or insurance premia (See note 9).		

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended——— and that no other income accrued or arose or was received by $\frac{\text{me}}{\text{the firm}}$ during the said year and that $\frac{\text{I}}{\text{the firm}}$ have no other sources of income.

Signature—————

Date—————

N.B.—(a) Income accruing to you outside British India received in British India is liable to taxation, and must be entered by you in the form.

(b) All income from whatever source derived must be entered in the form, including income received by you as a partner of a firm.

Note 1.—In column 2 should be shown the gross amount of salary and not the net amount after deduction on account of income-tax, provident funds, etc.

Note 2.—“Interest on securities” means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or Company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term “interest on securities” does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 8.

Note 5.—(a) Where you keep your accounts on the mercantile accountancy or profits system, you must file return in the following form :—

Income, profits or gains from business, trade, commerce.

	R
Income, profits or gains as per Profit and Loss Account for the year ended _____192	...
<i>Add</i> any amount debited in the accounts in respect of—	
1. Reserve for bad debts
2. Sums carried to reserve for provident or other funds
3. Expenditure of the nature of charity or presents
4. Expenditure of the nature of capital
5. Income-tax or Super-tax
6. Drawings or salary of proprietor or partners
7. Rental value of property owned and occupied
8. Cost of additions to, or alterations, extensions, improvements of any of the assets of the business.	...
9. Interest on the proprietor's or partner's capital including interest on reserve or other funds.	...
10. Losses sustained in former years
11. Losses recoverable under an insurance or contract of indemnity
12. Depreciation of any of the assets of the business
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits.	
TOTAL
<i>Deduct.</i> —Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of local Governments declared to be income-tax free.	...
Balance

(Signature of the person making the return)._____

(Date)_____192 .

(b) Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, i.e., showing details of the gross receipts and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business;
- (ii) Additions to or alterations, extensions, or improvements of any of the assets of the business;
- (iii) Interest on the capital of the proprietors or partners of the business;

- (iv) Bad debts not actually written off in the accounts;
- (v) Losses sustained in previous years;
- (vi) Reserves of any kind;
- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business;
- (viii) Any expenditure of the nature of charity or a present;
- (ix) Any expenditure of the nature of capital;
- (x) Any loss recoverable under an insurance or a contract of indemnity;
- (xi) Depreciation of any kind other than that specified in the Act;
- (xii) Drawings or salaries of the proprietors or the partners;
- (xiii) Private or personal expenses of the assessee;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

Note 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred *solely* for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

Note 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends which shareholders receive represent the net amount remaining after income-tax has been paid. The amount of income-tax paid upon these dividends, even if the dividends are stated to be income-tax free, should be added to the amount of the dividends actually received, and the gross amount arrived at should be entered in column 2 of the statement.

If the rate of tax applicable to your total income is less than the rate at which tax has been paid upon your dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

Note 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head.

Note 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.

P. 74. 20. The Notice of Demand under section 29 shall be in the following form:—

NOTICE OF DEMAND UNDER SECTION 29 OF THE INCOME-TAX ACT, 1922.

To

1. You have been assessed for the current year to income-tax amounting to Rs. [in addition to which a penalty of

Rs. _____ has been imposed], as shown in the copy of the assessment form sent herewith.

2. You have also been assessed to super-tax amounting to Rs. _____

3. You are required to pay the amount of Rs. _____ on or before the _____ to _____ at _____ when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at _____ (or the Collector of the district) within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (3) of section 30 and verified as laid down in that form.

Or

The assessment has been made under sub-section (4) of section 23 of the Indian Income-tax Act, 1922, because you failed ^{to make a return of your income under section 22} to comply with a notice under sub-section (4) of section 22, and no appeal ^{to comply with a notice under sub-section (2) of section 23} lies. But if you were prevented by sufficient cause from making the return or did not receive the notice(s) aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying, with the terms of the notice(s), you may apply to me, under section 27, to cancel the assessment and proceed to make a fresh assessment.

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh chalans.

Dated _____ 19 ____

Income-tax Officer.

(Place) _____

Note.—The superfluous words in paragraph 5 should be deleted.

ASSESSMENT FORM.

ASSESSMENT FOR 192 -2 .

District.

Name of assessee

Address

Serial number.	Detailed sources of income.	Amount of Income.	Tax deducted at source.		REMARKS.
			R	A.	
1	Salaries				
2	Interest on securities				
3	Property				
4	Business				
5	Profession				
6	Other sources				
(i) Total income					
(ii) Deduction on account of provident fund, insurance premia, etc.			R	A.	
(iii) Deduct sums received as dividends or from a registered firm.					
(iv) Deduct amount of interest from tax-free securities of the Government of India.					
(v) Income now to be taxed					
(vi) Rate applicable—pies per rupee					
(vii) Amount of tax					
(viii) Reduction under Section 17			R	A.	
(ix) Amount of deductions at source from salary or interest on securities for which credit is given under section 18 (5).					
(x) Abatement on account of dividends (at pies per rupee).					
(xi) Abatement on account of income from a registered firm (at pies per rupee).					
(xii) Net amount of tax					
(xiii) Penalty under section 28 [or section 25 (2)]					
(xiv) Total sum payable (in figures as well as in words)					
Rupees					
Annas					

FOR USE IN 1922-23 ONLY.

Adjustment for year 1921-22 and net demand.

	Rs	A.	P.		Rs	A.	P.
1. Actual total income of year adjusted.				6. Tax already paid in respect of the year adjusted—			
2. Deduct items exempted or excluded under section 12 of the Indian Income-tax Act, 1918.				(i) at source . . .			
3. Actual taxable income of year adjusted.				(ii) to Income-Tax Officer (preliminary assessment under section 18).			
				Total . . .			
4. Rate applicable—				7. Balance for the year adjusted—			
Pies ordinary on Rs .				Recoverable			
				To be refunded . . .			
5. Tax due—				8. Account for 1922-23 as above.			
Ordinary—section 18.				9. Net amount to be recovered			
				refunded .			
Total .				In words .			

21. An appeal under section 30 shall, in the case of an appeal against a refusal of an Income-tax Officer to make a fresh assessment under section 27, be in Form A; in the case of an appeal against an order of an Income-tax Officer under section 25 (2) in Form C; in the case of an appeal against an order of an Income-tax Officer under section 28 in Form D and in other cases in Form B.

P. 75.

FORM A.

Form of appeal against an order refusing to reopen an assessment under section 27.

To

The Assistant Commissioner of

The day of

19 .

The petition of of
sheweth as follows:—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. for the year commencing the 1st day of April 19 .

2. Your petitioner was prevented by sufficient cause from making the return required by section 22 or did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub-section (4) of section 22 or sub-section (2) of section 23, as more particularly specified in the statement attached.

3. Your petitioner therefore presented a petition to the Income-tax Officer under section 27, requesting him to cancel the assessment. This petition, the Income-tax Officer, by his order dated _____ of which a copy is attached, has rejected.

4. Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to make a fresh assessment in accordance with the law.

(Signed)_____

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

(Signed)_____

FORM B.

Form of appeal against assessment to Income-tax.

To

The Assistant Commissioner of

The

day of

19 .

The petition of _____ of _____ sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. _____ for the year _____

commencing the 1st day of April 19 . The notice of demand attached hereto was served upon him on

2. Your petitioner's income accruing or arising or received on demand under the provisions of the Act to accrue or arise or to be received in British India for the year ending the day of 19 amounted to Rs.

3. Such income and profits actually accrued or arose or were received during the period of months and days.

4. During the said year your petitioner had no other income or profits.

5. Your petitioner has made a return of his income to the Income-tax Officer under section 22, sub-section (2) of the Act and has complied with all the terms of the notice served on him by the Income-tax Officer under section 23 (2) and/or [section 22 (4)].

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act).

(Signed)_____

GROUND'S OF APPEAL.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed)_____

FORM C.

Form of appeal against an order under section 25 (2).

To

The Assistant Commissioner of Income-tax.

The day of

The petition of of

sheweth as follows:—

1. Under section 25 (2) of the Indian Income-tax Act, 1922, a penalty of Rs. has been imposed on your petitioner.

The notice of demand attached hereto was served upon him on

2. Your petitioner was prevented by sufficient cause as more particularly explained below from giving notice within the time prescribed by section 25 (2) to the Income-tax Officer of the discontinuance of his business, profession or vocation.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing a penalty of Rs. _____ upon your petitioner may be set aside.

(Signed)_____

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

(Signed)_____

FORM D.

Form of appeal against an order under section 28.

To

The Commissioner of Income-tax.

The Assistant Commissioner of Income-tax.

The _____ day of _____ 19 .

The petition of _____ of _____ sheweth as follows :—

1. Under section 28 of the Indian Income-tax Act, 1922, a penalty of Rs. _____ has been imposed on your petitioner by the Income tax Officer Assistant Commissioner. The notice of demand attached hereto was served upon him on _____

2. Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particular thereof but as will be seen from the statement of facts attached returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner therefore requests that the order of the
Income tax Officer
Assistant Commissioner imposing a penalty of Rs. _____ upon your petitioner may be set aside.

(Signed)_____

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed)_____

22. An appeal under section 32 (2) shall in the case of an appeal against an order of an Assistant Commissioner under section 28 be in Form C attached to Rule 21 and in other cases in Form E.

FORM E.

To

The Commissioner of Income-tax,

The _____ day of _____ 19 .

The petition of _____ sheweth as follows:—

1. Under setcion 31 (3) of the Indian Income-tax Act, 1922, th Assistant Commissioner of _____ has increased

the tax payable by your petitioner from Rs. _____ to
Rs. _____.

2. Your petitioner prays that the enhancement may be set aside or reduced to Rs. _____ for the reasons stated below :

Signed _____

Grounds of appeal.

I, _____, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed _____

P. 2.

23. (1) Subject to the provisions of rule 24, in the case of income derived in part from agriculturè and in part from business an assessee shall be entitled to deduct from such income the market value of any agricultural produce raised by him or received by him as rent in kind which he has utilized as raw material for the purposes of his business or the sale receipts of which are included in the accounts of his business. The balance of such income shall be deemed to be income derived from the business and no further deduction shall be made therefrom in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

P. 2.

23. (2) For the purposes of sub-rule (1) " market value " shall be deemed to be :—

(a) where agricultural produce is ordinarily sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made.

(b) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

(1) the expenses of cultivation;

(2) the land revenue or rent paid for the area in which it was grown; and

- (3) such percentage of the aggregate of (1) and (2) as the Board of Inland Revenue may from time to time fix for the class of produce concerned.

24. Income derived from the sale of tea grown and manufactured by the seller shall be computed as if the growing, manufacture and sale of such tea were a business within the meaning of section 10 of the Act, and 25 per cent. of such income shall be deemed to be derived from business.

25. In the case of Life Assurance Companies incorporated in British India whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance Business shall be the average annual net profits disclosed by the last preceding valuation, provided that any deductions made from the gross income in arriving at the actuarial valuation which are not admissible for the purpose of income-tax assessment, and any Indian income-tax deducted from or paid on income derived from investments before such income is received, shall be added to the net profits disclosed by the valuation.

P. 100. 26. Rule 25 shall apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies, the profits of which can be ascertained from the results of an actuarial valuation.

P. 100. 27. If the Indian income-tax deducted from interest on the investments of a company exceeds the tax on the income, profits and gains thus calculated, a refund may be permitted of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits, and gains.

P. 100. 28. In the case of other classes of insurance business (fire, marine, motor car, burglary, etc.) of a company incorporated in British India, the income, profits or gains shall be determined in accordance with the provisions of the Act, subject to the allowance specified in the rule next following.

P. 100. 29. If in the ordinary accounts of any insurance business other than Life Assurance, Annuity, or Capital Redemption Business carried on by an Insurance Company any amount is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risk of exceptional losses) and is not used for any other purpose

such amount may be treated as expenditure incurred solely for the purpose of earning the profits of the business.

30. Any amount either written-off in the accounts or through the Actuarial Valuation Balance Sheet to meet depreciation of, or loss on, securities or other assets, or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose, may be treated as expenditure incurred solely for the purpose of earning the profits of the business. Any sums taken credit for in the accounts or Actuarial Valuation Balance Sheet on account of appreciation of or gains on the securities or other assets shall be deemed to be income chargeable to tax, subject always to deduction of such portion thereof as has been otherwise taken into account in calculating the income, profits or gains. **P. 100.**

31. The income, profits and gains of companies carrying on Dividing Society or Assessment business shall be taken at 15 per cent. of the premium income in the previous year and, in the case of non-resident companies, at 15 per cent. of the Indian premium income in the previous year. **P. 100.**

32. Notwithstanding anything contained in rules 25 to 31, the total income, however, of an insurance company carrying on more than one class of business shall be determined by its aggregate income from all classes of businesses. **P. 100.**

33. In any case in which the Income-tax Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to income-tax may be calculated on such percentage of the turnover so accruing or arising as the Income-tax Officer may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income-tax Act) as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the Income-tax Officer may deem suitable. **P. 84.**

34. The profits derived from any business carried on in the manner referred to in section 42 (2) of the Act may be determined for the purposes of assessment to income-tax according to the preceding rule. **P. 84.**

35. The total income of the Indian branches of non-resident insurance companies (Life, Marine, Fire, Accident, Burglary, **P. 84, 100.**

Fidelity Guarantee, etc.), in the absence of more reliable data, may be deemed to be the proportion of the total income, profits or gains, of the companies, corresponding to the proportion which their Indian premium income bears to their total premium income.

P. 88.

36. An application for a refund of income-tax under section 48 of the Act shall be made in the following form:—

Application for refund of Income-tax.

I, _____ of _____

do hereby state that my income from all sources to which the Act applies during the year ending _____ on the 31st March 19____, amounted to Rs. _____ only. /

I therefore pray for a refund of

Rs. _____ under " Salaries "

Rs. _____ under " Securities "

Rs. _____ under " Dividends from companies "

Rs. _____ under " Share of profits of the registered firm "

known as _____ of which I am a partner.
ie portions
required
should be
scored out) *Signature* _____

I hereby declare that what is stated herein is correct.

Dated _____ 19 ____ .

Signature _____

P. 88.

37. The application under rule 36 shall be accompanied by a return of total income in the form prescribed under section 22 unless the applicant has already made such a return to the Income-tax Officer. .

P. 88. 38. Where the application under rule 36 is made in respect of interest on securities or dividends from companies, the application shall be accompanied by the certificate prescribed under section 18 (9) or section 20, as the case may be.

P. 88. 39. The application under rule 36 shall be made to the Income-tax Officer for the district in which the applicant is chargeable directly to income-tax or, if he is not chargeable directly to income-tax, to the Income-tax Officer for the district in which the applicant ordinarily resides, or if he is not resident in British India—

(i) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or

(ii) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was deducted.

40. An application for refund of income-tax under section 49 of the Act shall be made in the following form :—

Application for relief from double income-tax under section 49 of the Indian Income-tax Act, 1922.

I, _____ of _____, do hereby state that I have paid United Kingdom income-tax and super-tax amounting to £ _____ for the year ending 19 _____ on an income of £ _____ and that Indian ^{income tax} _{income-tax and super-tax} of Rs. _____ has also been paid on ^{the same income.} _{income from the same source amounting to Rs. _____}

I have obtained relief under the provisions of section 27 of the English Finance Act, 1920, at the rate of _____ see attached certificate from the Inspector of Taxes, _____. I now pray for a further relief at the rate of _____ amounting to Rs. _____ under section 49 of the Indian Income-tax Act, 1922, to which I am entitled. My income from all sources to which this Act applies during the "previous year" ending on the _____ 19 _____ amounted to Rs. _____ only—see

Return of income ^{attached} _{already submitted}.

Signature _____.

I hereby declare that what is stated herein is correct.

Signature _____.

Dated _____ 19 _____.

41. The application under rule 36 or rule 40 may be presented **P. 88.**
by the applicant in person or through a duly authorized agent
or may be sent by post.

PART III

**NOTES AND INSTRUCTIONS
REGARDING THE INCOME-
TAX LAW AND RULES**

NOTES AND INSTRUCTIONS REGARDING THE INCOME-TAX LAW AND RULES.

1. *Extent of the Act.* [Section 1 (2).]—This sub-section governs the whole of the Act and defines the areas to which the Act applies. Section 7 (2) on the other hand governs merely the taxation of particular classes of income.

The words “and to all other servants of His Majesty in those dominions” were added in the Act of 1918 as it was considered advisable to abandon the previous limitation, in the case of persons serving outside British India, of liability to British subjects, since it not infrequently happens that subjects of Indian States are taken into Government employment and sent to serve in places outside British India.

The words “including British Baluchistan” were inserted in the Act of 1922. Prior to the passing of that Act, the Income-tax Act was applied to British Baluchistan by notification in a restricted form, income-tax being, under the notification, leviable only upon salaries received by persons in the service of, and paid by or on behalf of, Government or of a local authority established in the exercise of the powers of the Governor General in Council. The Act now applies in full force to the whole of British Baluchistan.

The whole of the Act has been applied to Berar, the Civil and Military Station of Bangalore and the Districts of Abu and Angul. Only so much of the Act has been applied to the Cantonment of Baroda, the British administered areas in Central India and the British administered areas (excluding Railway lands) in the Bombay Presidency, as relate to the assessment and collection of income-tax on salaries of Government servants or of local authorities established in the exercise of the powers of the Governor General in Council.

Under this sub-section—

(a) the Act applies in Indian States to all persons in the service of Government, whatever their nationality. It applies in Indian States to persons in the service of a local authority established in the exercise of the powers of the Governor General in Council, only if they are British subjects or servants of Government lent to the local authority;

(b) the salaries of Government officers serving outside India are not liable to income-tax unless they are drawn or otherwise received in India.

(c) Frontier Agency tracts and ceded areas are included in the term “dominions of Princes and Chiefs in India in alliance with His Majesty” (G. I. No. 791-F., dated the 26th March 1918).

2. *Definition of “agricultural income.”* [Section 2 (1).]—Agricultural income is exempted from tax under the provisions of section 4 (3) (viii) of the Act and any income to be exempted must fall within the words of this definition. The definition was amended in the Act of 1922 in order to make it clear that rent or revenue derived from land used for agricultural purposes [clause (a)] is exempt from tax only in cases where the land is assessed to land revenue by an authority in British India or is subject to a local rate assessed and collected by an authority

in British India, and that the exemption does not apply to cases where the land pays revenue or local rate to authorities outside British India. Clauses (b) and (c) were also amended at the same time in order to make it clear that the limitations in clause (a) apply also to the incomes specified in clauses (b) and (c), so that income derived from agriculture will only be exempt if the agriculture is in respect of land on which land revenue or local rate is paid to an authority in British India.

A further amendment was also made by the Act of 1922 in clause (b) (iii). Under the previous Acts profits from the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him were included under "agricultural income" only in cases where the cultivator or receiver of rent-in-kind did not keep a shop or stall for the sale of such produce. Under the present Act profits derived by a cultivator from the sale of the produce raised by him are included in the term "agricultural income" where the produce is sold in its raw state, that is, if no process has been performed in respect of the produce other than a process of the nature described in sub-clause (ii). The tax therefore is now not leviable on the profits derived by a cultivator or receiver of rent-in-kind from the sale of the *raw* produce raised or received by him even if he keeps a shop for the retail vend of such raw produce.

If a land-owner grows on his own land which is assessed to land revenue forests or trees and derives income therefrom, he is not liable to income-tax on such income. Persons, however, who take contracts in forests for the cutting down and selling of timber are liable to tax on the profits from such transactions.

Assignment of land revenue to a Jagirdar is not assessable to income-tax in the hands of the Jagirdar.

Interest on arrears of rent of land used for agricultural purposes is part of the rent derived from the land and is therefore not liable to income-tax, subject to the exception that if the arrears are secured by a bond and are therefore recoverable by civil suit such interest is taxable.

Rules 23 and 24 prescribe the manner in which, and the procedure by which, profits and gains shall be arrived at in the case of incomes derived in part from agriculture and in part from business, and provide for the separation of industrial from agricultural profits in cases where the agricultural *raw* produce is worked up for the market.

Owing to the difficulty experienced in separating the agricultural (non-taxable) and non-agricultural (taxable) receipts and expenditure in the case of the tea industry, rule 24 provides that the amount of income liable to the tax in the case of a person growing, manufacturing and selling tea shall be taken as one-quarter of the profits of the whole business, the profits of the whole business being ascertained in exactly the same manner as if the profits from all the processes concerned were liable to the tax. Where the person growing, manufacturing and selling tea has separate purely agricultural income (*e.g.*, from rent or cultivation of land on which tea is not grown) no account shall be taken of such income in calculating the "profits of the whole business." Some concerns again are engaged in the growing of tea seed. Where the tea seed is produced for the use of the assessee, it must, of course, be included in the "profits of the whole business." No tax should, however, be levied on the profits derived from the growing

of tea seed in cases where the tea seed is sold to a third party and where separate accounts are maintained for the expenditure and receipts for the growing of the seed. Although under section 10 (2) (ix) of the Act the only expenditure that can be allowed to be set against profits is expenditure incurred solely for the purpose of earning the profits or gains taxable in any year, it will only be fair in the case of tea concerns to allow as a charge against profits the whole of the cost of the upkeep (*e.g.*, weeding and draining) of extensions of the estate which are not in bearing. No allowance can be made on account of any capital expenditure in connection with such extensions such as the acquisition, clearing and draining of the land, the making of roads or the erection of buildings before the cultivation begins, but when once the cultivation has begun with the completion of the planting, the annual cost of the upkeep of such extensions should be allowed as a business expense even although the expense is not in bearing.

Only 25 per cent. of dividends on shares held in Tea Companies should be taken into account in calculating the total income of the shareholder.

Attention is invited to the ruling of the High Court of Bengal (Case No. 1 in Volume II) in which it has been held that the premium paid for the settlement of waste lands or abandoned holdings may reasonably be regarded as "rent or revenue" derived from land, as used in this definition, but that the same considerations do not apply to the *salami* or premium paid to a land-holder for recognition of a transfer of a holding from one tenant to another. This latter sum is taxable. Illegal *abwabs* are also taxable since they do not come within the definition of "agricultural income."

Attention is invited also to the rulings of the Patna High Court and of the Bengal High Court (Cases Nos. 2 and 3 in Volume II) in which it has been held that the profits of sugar factories and profits derived from the manufacture of tea as a marketable commodity from the green leaves are liable to assessment.

3. *Definition of "assessee."* [Section 2 (2).]—"Assessee" is defined to mean a person by whom income-tax is payable. Income-tax includes super-tax which is defined in section 55 to be "an additional duty of income-tax." Under section 3 (39) of the General Clauses Act, the word "person" includes any company or association or body of individuals whether incorporated or not.

The charging sections (sections 3 and 55) lay down who the persons and associations are who are liable to income-tax and super-tax. Income-tax is payable under section 3 by every individual, Hindu undivided family, company, firm and other association of individuals, and super-tax under section 55 is payable by every individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm. While both income-tax and super-tax, therefore, are payable by every individual, Hindu undivided family, company and other association of individuals not being a firm, there is a distinction in the case of firms. All firms whether registered or unregistered (see paragraph 9) are liable to pay income-tax but while unregistered firms are liable to pay super-tax, registered firms are not. The income of registered firms is liable to super-tax in the hands of the in-

dividual partners of the registered firm. Co-operative Societies, Clubs (not being companies) and Chambers of Commerce are examples of "association of individuals."

Provident funds of private companies and firms should not be assessed to income-tax as "other associations of individuals," otherwise than by deduction at the source upon their income from investments and should not be charged to super-tax at all.

4. *Definition of "company."* [Section 2 (6).]—This definition includes all companies constituted in the Dominions of the Crown, while the latter part of the definition is confined to such foreign associations as the Central Board of Revenue may desire to treat as companies for the purposes of the Act. The object of this latter part is to include associations such as the *French Sociétés Anonymes* which, though incorporate bodies, have many characteristics in common with the companies recognised by our law, if the Central Board of Revenue thinks that they should be treated as companies for the purposes of the Act.

5. *Definition of "previous year."* [Section 2 (11).]—Under section 3 of the Act, assessable income is to be computed with reference to a fixed period which is known as the "previous year." This fixed accounting period, the income, profits and gains of which alone are taken into consideration in making an assessment, is treated as isolated, without any consideration of what went before or what came after. The definition of the phrase "previous year" in the Act of 1918 restricted the accounting period to a period of 12 calendar months. The period of 12 calendar months was the period ending on the 31st day of March next preceding the year for which the assessment was to be made, but the assessee was given an option of adopting a year of 12 calendar months ending on a date other than the 31st of March if that was the date up to which his accounts were made up. This gave rise to difficulties in the case of certain communities, whose commercial year is not necessarily a calendar year, but is a period which, expressed in calendar months, varies from year to year, and in one year may be slightly over and in another slightly under 12 months. Again, under the definition in the Act of 1918, any year which was adopted in place of the financial year had to terminate at some period within the previous financial year, and as there are numerous cases where the commercial year terminates in the month of April, the returns and accounts on which the assessment was based in such cases related to a period more than 12 months prior to the date of assessment. While the definition of the phrase in the Act of 1918 has been repeated practically without alteration in clause (a) of this sub-section, clause (b) is a new provision providing for the difficulties referred to above. Under this clause the Central Board of Revenue or the Commissioner of Income-tax in a province, if authorised by the Central Board of Revenue, may determine as the "previous year" a commercial year which may be slightly over or slightly under 12 months, and which may terminate on a date subsequent to the end of the previous financial year. The Central Board of Revenue has authorised the Commissioner of Income-tax in each province to determine as the "previous year" in the case of any person, business or company, or class of person, business or company,

- (a) a commercial year which may consist of more or less than 12 months, provided that no commercial year which may

extend to less than 11 or more than 13 calendar months in any one year shall be so determined; and

- (b) a commercial year terminating after the end of the previous financial year, provided that no commercial year terminating later than one month after the end of the previous financial year shall be so determined.

Where the Commissioner desires that a "previous year" should be recognised which does not come within his powers of sanction as stated above, he must obtain the orders of the Central Board of Revenue.

Income-tax Officers are, therefore, debarred from treating as a "previous year" any period which does not come within the definition in clause (a) unless such "previous year" has been sanctioned either by the Income-tax Commissioner or the Central Board of Revenue.

Under the proviso to clause (a) an assessee who has, after the 31st March 1922, once exercised the option of selecting as his "previous year" a year terminating on a date other than the 31st day of March within the previous financial year, may not again exercise that option except with the consent of the Income-tax Officer, and upon such conditions as he may think fit. Income-tax Officers in dealing with such cases, and Commissioners in dealing with cases under sub-clause (b), should take steps to secure that the changing over from one previous year to another shall not result in any loss of revenue. The convenience of an assessee in this matter must be studied so far as possible, as it is desirable that the accounting period for income-tax purposes should be the same as the accounting period according to which an assessee makes up his accounts for the purposes of his business, but in the actual year of change conditions should be laid down sufficient to secure that the substitution of one year for another shall not result in any profits of an assessee escaping assessment.

6. *Definition of "Principal Officer."* [Section 2 (12).]—Income-tax Officers should treat as the "Principal Officer" of a local authority or company or other public body or association in the first instance the officials specified in clause (a); it is only in cases where the Income-tax Officer has no information regarding the persons who discharge the functions of the officers mentioned in clause (a) or where such persons cannot be found, that he should use the powers conferred by clause (b) of treating as the principal officer any other person connected with the company, public body or association.

7. *Meaning of the term "local authority."*—"Local authority," a phrase used in sections 2 (12), 4 (3) (iii), 7 and 21, is defined in section 3 (28) of the General Clauses Act as

"a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of, a municipal or local fund."

8. *Definition of "public servant."* [Section 2 (13).]—This definition is of importance for the purposes of section 54 of the Act. The definition of the phrase in the Indian Penal Code contains the following:—

"The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely:—

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment or

contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

9. *Registered and Unregistered Firms.* [Section 2 (14) and (16).]—Rules 2 to 6 prescribe the method of registering a firm. A firm to be registered must be constituted under an instrument of partnership which definitely specifies the individual shares of the partners in the profits of the firm. It should be carefully noted that an application for registration must be made on or before the date on which a return is due under section 22 (2) of the Act. If an application is made after that date it should be returned to the person presenting it as beyond time. Even if such an application is accepted it can have no effect on the assessment for that year, *vide* case No. 11 (in Volume II) decided by the Allahabad High Court. The distinction between a registered and unregistered firm for the purposes of this Act is:—

(1) *Income-tax* is assessed upon the profits of a *registered* firm at the maximum rate whatever the amount of the profits of the registered firm may be (see Finance Act); and a member of such a registered firm, on satisfying the Income-tax Officer that such maximum rate is higher than the rate applicable to his "total income," may get a refund on his share of those profits calculated at the difference between the two rates [see section 48 (2)], such share of the profits being included in the "total income" of such member for the purpose of determining the rate applicable [see section 16 (1)]. In the case of an *unregistered* firm *income-tax* is levied on the income of the firm at a rate graded according to the profits of the firm as if it were an individual (see Finance Act); a member of such a firm is not entitled to any refund, but his share of the profits of the firm is included in his "total income" for the purpose of determining the rate at which he shall pay income-tax on any other income [see section 16 (1).]

The profits of a *registered* firm are liable to tax at the maximum rate even if they are less than Rs. 2,000, while an *unregistered* firm is not liable to income-tax if its profits in any one year are less than Rs. 2,000. But where the profits of an unregistered firm are not assessed to income-tax, they are liable to tax in the hands of the individual members of the firm, that is, they are included in the assessable income of the individual member [see Finance Act and section 14 (2) (b)];

(2) A *registered* firm is not liable to *super-tax*, the share of individual members in the profits of such a firm being included in the income of each individual member for the purposes of super-tax. An *unregistered* firm is, however, liable to super-tax (like an individual) on that

amount of the profits of the firm which is in excess of Rs. 50,000 (see Finance Act and section 55 of the Income-tax Act). Super-tax is not payable by an individual having a share in an unregistered firm in respect of the profits of the unregistered firm, except in cases where the profits of the unregistered firm have not been assessed to super-tax (see section 55 proviso).

10. *Definition of "total income"*. [Section 2 (15).]—The phrase "total income" is used in sections 3, 15 (3), 16 (1), 17, 22 (1) and (2), 23 (1) and (3), 48, 55 and 56. The necessity for the definition and for the use of the phrase is due to the fact that, as stated in paragraph 3, tax is payable not only by individuals but also by firms, companies and Hindu undivided families; that is the Act provides for taxation at the source in certain cases and for taxation in the hands of the individual recipient in others. Whether, however, tax is deducted at the source or in the hands of the individual recipient, it is the total income of the individual recipient from all sources to which the Act applies that determines his liability to income-tax (that is, whether his total income amounts to Rs. 2,000), and the rate at which he has to pay income-tax on the whole of his income. The solitary exception is in the case of Hindu undivided families, income from which [under section 14 (1) read with section 16 (1) of the Act] is not included in the total income of the individual recipient. Again, there are certain classes or portions of income such as the amounts deducted from salaries under the proviso to section 7 (1), the sums paid on account of insurance premia under section 15, securities issued income-tax free by the Government of India or by local Governments under the provisos to section 8, on which income-tax is not payable, but all such sums are included in the total income of the assessee for the purpose of determining his liability to income-tax and the appropriate rate at which the tax shall be levied. There is, however, no taxation at the source in the case of super-tax, nor are there any portions of income (other than income derived from a Hindu undivided family by a member or from an unregistered firm in the special case mentioned in the proviso to section 55) which are exempted from payment of super-tax and it is upon the total income that super-tax is chargeable in the hands of the individual.

11. *Graduation of income-tax*. (Section 3.)—The Income-tax Act deals merely with the basis, the methods and the machinery of assessment, and does not contain, as the previous Acts did, schedules specifying the rates at which income-tax shall be charged. These rates are determined by the Finance Act which is passed annually by the Central Legislature. The rates prescribed by the current Finance Act will be found on the last page of Part I of this Manual. The same remarks apply to super-tax (see section 55 of the Act).

12. *Definition of "Income"* (Section 3.)—Section 3 of the Act of 1918 provided that the Act should apply to "income." Difficulties were experienced in regard to the assessment of business profits owing to a High Court ruling that the word "income" in that section meant income actually or constructively received and that the use of the word in that sense in the said section restricted and limited any interpretation to be placed upon the following sections of the Act which specified the different classes of income liable to the tax. This interpretation would, if strictly followed, have caused considerable inconvenience in assessing business

profits to those assesseees who keep their accounts not on the basis of sums actually received and sums actually paid out but on the principles of mercantile accountancy, by the preparation of a profit and loss account and the comparison of the value of the stock in hand at the beginning and at end of each year, since such assesseees would have been required to recast the whole of their accounts on a cash basis for income-tax returns. There were other directions also in which so strict an adherence to the interpretation placed on the word "income" would have caused difficulties. For this reason the phraseology in section 3 and in other sections of the present Act has been re-worded. The plan adopted has been not to attempt a general covering definition of "income," but to prescribe that the tax shall be chargeable not upon "income" (whether "income" be deemed to mean actual receipts and expenditure or any other general definition) but in respect of "all income, profits or gains" as set out and defined in section 4 and sections 6 to 12 of the Act. If there is any class of income that does not fall within the words that impose the charge in those sections, that class of income is not within the scope of the tax.

For the method of accounting to be adopted in computing "income, profits or gains," see paragraph 35.

13. *Accounting period to be adopted for determining assessable income.* (Section 3).—Under the Act of 1918 tax at the rates fixed for any year was levied on the income of that year. A provisional assessment was first made on the income of the preceding year and this assessment was subsequently adjusted and corrected when the income of the year in which the provisional assessment was made was ascertained. This system has now been abolished in the present Act which provides for the tax at the rates sanctioned for any year being assessed finally on the income, profits and gains of the "previous year" (see paragraph 5) and for the abolition of the adjustment system except in the cases specially provided for in section 25 and in the provisos to section 68 of the Act. The provisos to section 68 of the Act are merely temporary provisions providing for the transitional period in the year 1922-23 and the only exceptions to the general rule that assessments are made finally on the profits of the previous year are contained in section 25 of the Act. Under the first two sub-sections of section 25, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses that close down during the course of a financial or commercial year, it is provided that in such cases, in addition to the assessment on the income of the previous year, a further assessment may be made in the year in which a business, profession or vocation is closed down on the income of that year. This is merely a discretionary and not an obligatory method of assessment to be adopted in exceptional cases where delay in making the assessment might lead to a loss of revenue.

The other class of cases provided for in sub-section (3) of section 25 is confined to those particular businesses, professions or vocations on which tax had been charged under the provisions of the Act of 1918. Since the abolition of the adjustment system meant that in the case of those particular business the tax would, had no special provision been made, have to be paid on the profits of one year more than under the system in force under the Act of 1918, it is specially provided that in the year in which such businesses, professions or vocations close down, the adjustment provided for in the Act of 1918 shall be made.

14. *When income earned outside British India is taxable.* [Section 4 (1).]—The Act applies to all income from whatever source it is derived if it accrues or arises or is received in British India, or is, under the provisions of the Act, deemed to accrue or arise or to be received in British India. The tax is, therefore, payable on all income arising or accruing in British India whether the recipient resides in British India or not (see case No. 5 in Volume II.) The tax is also payable in respect of income received by a resident in British India irrespective of whether it accrued or arose within or without British India. Tax is also payable in respect of income which is “deemed under the provisions of this Act to accrue or arise or to be received in British India.” The particular cases where income is “deemed under the Act to accrue or arise or to be received in British India” are specified in section 4 (2), section 7 (2), section 11 (3), and section 42.

Section 4 (2) was inserted in the present Act owing to the tax having previously been evaded in the case of income accruing or arising out of British India and received in British India by bringing in the said income at intervals and claiming that as such income was not received in British India in the year in which it arose or accrued out of British India, it was, when brought into British India, not income but accumulated profits or savings or capital. The sub-section is restricted in its application to the case of *business profits or gains* and provides with respect to such profits or gains that they shall be deemed to be profits and gains of the year in which they are received or brought into British India notwithstanding that they did not accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose. The provision relates, of course, merely to income, profits or gains, and not to the importation of capital; it provides for the inclusion in the assessable income, profits or gains of the year in which it was received or brought into British India, of business profits or gains accruing or arising within the previous three years which would, apart from the provisions of this sub-section, have been taxable had they been brought into British India in the year in which they arose or accrued.

A person resident in British India carrying on and controlling a business abroad is not, therefore, liable to tax on the profits of the business abroad unless and until such profits are received or brought by him into British India, and when so brought or received he is only liable to tax on the profits of the last three years, but the profits of those three years are included in his taxable income of the year of receipt.

A money-lender resident in an Indian State who advances loans in an Indian State to persons residing in British India and who receives his interest in the State is not liable to pay income-tax on the interest which he receives.

Reference is invited to case No. 4 in Volume II in which the High Court of Madras held that profits derived from business carried on outside British India by persons resident in British India are not liable to assessment under the Act if the profits are not remitted to British India. The assessee in this case who resided in British India was a proprietor of a money lending business carried on by his agents in various places outside British India. The only part taken by the proprietor in the busi-

ness was to acquaint himself with the state of business abroad and occasionally to issue general instructions, and it was not disputed that none of the income accruing abroad had ever been transmitted to him in India.

Reference is also invited to case No. 8 in Volume II in which the High Court of Bengal have held that the Bengal Nagpur Railway Company is not liable to pay tax on the interest guaranteed by the Secretary of State. This ruling should be followed in the case of all Railway companies where the interest is guaranteed by the Secretary of State and is paid in England only. It does not apply to cases where the interest is guaranteed by an authority other than the Secretary of State or is paid in India.

For the special case of tax on interest on sterling securities see paragraph 15.

15. *Is interest on the sterling securities of the Government of India or on the sterling securities issued by English companies carrying on business in British India liable to Indian income-tax?*—Where such interest is received by the debenture or security holder in British India, it is clearly liable to Indian income-tax under section 4 (1); where, however, it is not received in British India, the tax will only be payable under the terms of the same section if the interest can be held to accrue or arise there. “Accrue or arise” as used in this connection are general words descriptive of a right to receive, and in this view the relevant portion of section 4 (1) of the Act may be paraphrased by stating that the income to which the Act applies is income received in British India or income which there is a right to receive in British India. If this test is applied, interest on the sterling securities of the Government of India, if not received in British India, will not be chargeable with Indian income-tax; and similarly the interest on sterling debentures issued by companies will not be chargeable if, as is usually the case, there is a right to receive it in England. For the purpose of the test it is immaterial in what currency the security or loan and its interest is expressed, and consequently the same principle is also applicable in determining the liability to Indian income-tax of the interest on foreign (other than sterling) debentures. On the other hand, interest on promissory notes of the Government of India enfaced for payment in England is liable to Indian income-tax, since here the right to receive payment of interest is a right to receive it in India, and the concession by which Government paper can be enfaced for payment of interest in London does not constitute any part of the actual contract entered into by Government.

16. *Exemptions.*—In addition to the exemptions mentioned in section 4 (3), the following further exemptions have been made by the Governor-General in Council in exercise of the powers conferred by section 60 of the Act.

“The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income of an assessee for the purposes of the said Act:—

- (1) The official allowance which an agent of a Prince or State in India, who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India, receives as such agent in British

India from the Prince or State; and the official salaries and fees received in India by Foreign Consuls, Representatives and Consular employes from their Governments.

(The latter portion of this exemption applies only to *foreign* consuls, representatives and their foreign employes: and as regards them it applies only to salaries and fees received from their Governments and not to any other income, profits or gains, accruing or arising to them or received by them in British India. The exemption does not apply to residents in India who are employed as consuls or representatives of foreign powers or as employes of foreign consuls.)

- (2) The salary and allowances paid by a State in India during the period of deputation to any person deputed by the State for training in British India.
- (3) Scholarships granted to meet the cost of education.
- (4) Such portion of the income of a member of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Royal Indian Marine as is compulsorily deducted from his salary by the orders, or with the approval of Government for payment to a mess, wine or band fund.
- (5) The allowances attached to—
 The Victoria Cross.
 The Military Cross.
 The Order of British India.
 The Indian Order of Merit.
- (6) The interest on Government securities held by Ruling Chiefs and Princes of India, as the property of their States, in the special non-transferable form of Government promissory notes.
- (7) The yield of Post Office cash certificates.
- (8) The interest on deposits in the Post Office Savings Bank.
- (9) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit.
- (10) The salary of His Majesty's Trade Commissioners in India.
- (11) The gratuities which are granted to officers and others in respect of wounds or injuries received either in action or in the performance of duty otherwise than in action in His Majesty's Naval, Military or Air Forces, British or Indian or in the Auxiliary Force, India, or in the Indian Territorial Force or in the Royal Indian Marine.
- (12) The gratuities which are granted to the widows, children or other relatives of officers and others who are killed in action or suffer violent death due directly or wholly to war service, or are killed or die of injuries sustained on flying duty or while being carried on duty in air craft under proper authority, or die within seven years from wounds or injuries so received.

- (13) Retiring gratuities with increments thereto granted under the rules framed by the Secretary of State in Council in pursuance of the Royal Warrant dated the 25th April, 1922.
- (14) Gratuities sanctioned under Army Instruction (India), No. 223, dated the 21st March, 1922, for regular Royal Engineer Officers on the Indian establishment belonging to the Survey or Railway Department and regular Indian Army Officers of the Survey Department.
- (15) Gratuities granted to Assistant Surgeons of the Indian Medical Department in Military employment declared surplus to establishment under Army Instructions (India) No. 516 of 1924.
- (16) Gratuities which are granted by the Railway Board or under general orders issued by the Railway Board to employees on their retirement or discharge from service or, in the event of their death while in service, to their widows or children or other members of their families.
- (17) Extraordinary gratuities which are granted by Government or by Railway Administrations to Government or railway servants (or to their widows, children or other representatives, as the case may be) who are injured or killed in the execution of their duties or who suffer injury or death owing to devotion to duty.
- (18) The allowance or salary paid in the United Kingdom to officers on leave or duty in that country whether such allowance or salary is paid in sterling in the United Kingdom or by means of negotiable rupee drafts on a bank in India.
- (19) The leave allowance or salary drawn from any Colonial Treasury by an officer on leave or duty in the Colony.
- (20) The pensions of officers drawn from any Colonial Treasury or paid in the United Kingdom, whether such pensions are paid in sterling or by means of negotiable rupee drafts on a bank in India.
- (21) The salaries of the light house keepers of light houses in the Red Sea.
- (22) The interest on Mysore Durbar Securities.
- (23) Pensions granted to officers of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine in respect of wounds or injuries received in action or in the performance of their duties as members of such forces otherwise than in action.
- (24) Pensions granted to members of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine, who have been invalided from service with such forces on account of bodily disability attributable to, or aggravated by, such service.



- (25) Value of rations issued in kind or money allowances paid in lieu thereof, to any officer or other rank in His Majesty's Naval, Military or Air Forces, British or Indian or in the Auxiliary Force, India, or in the Indian Territorial Force, or in the Royal Indian Marine; and
- (26) The income of persons, other than persons in the service of the Government, residing in the district of Angul; and
- (27) The perquisite represented by the right of any of the officers specified in the annexed list to occupy free of rent as a place of residence any premises provided by Government.

List of Officers.

The Governor General.

The Commander-in-Chief.

The Governor of a Governor's Province.

The Chief Commissioner of any of the following Provinces, namely:—

The North-West Frontier Province,

British Baluchistan,

Delhi,

Ajmer-Merwara,

Coorg,

and the Andaman and Nicobar Islands; and

The following class of income shall be exempt from the tax payable under the said Act, but it shall be taken into account in determining the total income of an assessee for the purposes of the said Act:—

The interest on Government securities purchased through the Post Office and held in the custody of the Accountant-General, Posts and Telegraphs."

In addition to the above the following remission has also been made under section 28 of the Co-operative Societies Act, 1912, *viz.*, "The Governor General in Council is pleased to remit the income-tax payable in respect of the profits of any co-operative society for the time being registered under that Act, or of the dividends or other payments received by the members of any such society on account of profits." It is to be particularly noted that under this latter notification Co-operative Societies are liable to pay income-tax on the income derived by them from interest on securities and that Co-operative Societies are not exempt from super-tax but are liable to pay super-tax on the whole of their profits.

Apart from the particular cases of Co-operative Societies and of Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs, the incomes or portions of incomes exempted under section 4 of the Act and under the orders of the Governor General in Council under section 60 of the Act referred to above, are not only not subject to income-tax or super-tax, but they are also not to be taken into account in determining the rate of tax on other income; they are excluded from consideration altogether.

17. *Exemption of income derived from property held under a religious or charitable trust.*—Under section 4 (3) (i) income derived from property which is held under a purely religious or charitable trust or under any other legal obligation that it should be utilised for religious or charitable purposes is exempt.

Section 4 (3) (ii) similarly exempts the income of religious or charitable institutions which is derived from voluntary contributions and is applicable solely to religious or charitable purposes.

To secure exemption under clause (i) or clause (ii) of section 4 (3) the income of religious or charitable institutions and income derived from property held for religious or charitable purposes need not be actually spent on religious or charitable purposes *in the year of receipt*. It is sufficient if it is set aside for those purposes. Where a trust exists the income-tax authorities are not required to satisfy themselves that it is so applied. In the case of *mixed* trusts, the income-tax authorities are required to enquire into the application of the income. Where property is held in part only for religious or charitable purposes a proportionate share of any expenses incurred on management should be considered as applied to those purposes.

To remove doubts regarding the application of these two clauses, read with the definition of "charitable purposes," to universities and other educational institutions the special exemption under section 60 of the Act mentioned in paragraph 16 (9) was made.

Attention is also invited to the exemption mentioned in paragraph 16 (3) of scholarships granted to meet the cost of education in the hands of the recipients of the scholarships.

18. *Exemption of Provident Funds.*—Under section 4 (3) (iv) the interest on securities held by certain provident funds, under section 4 (3) (v) capital sums paid as accumulated balances at the credit of subscribers to such funds, and under section 15 (1) contributions paid by subscribers to such funds up to a certain limit are exempt from the tax. The words "accumulated balance" are intended to include not only contributions and subscriptions but also interest thereon. These provident funds are only those to which the Provident Funds Act of 1897 applies, that is the provident funds of public servants or *quasi*-public servants, the constitution and control of which are regulated by the Provident Funds Act and the rules made thereunder. The exemption granted to Provident Funds which comply with the provisions of the Provident Insurance Societies Act, 1912, or which have been exempted from the provisions of that Act has been withdrawn by the Income-tax (Amendment) Act, 1924 (XI of 1924.) Provident Insurance Societies to which the Provident Insurance Societies Act applies, or which have been exempted from its provisions and which were in existence before the 1st April 1924, will continue to enjoy the exemptions under section 4(3) (iv) and (v) and section 15(1), to which they were entitled under Act XI of 1922, before it was amended by the Act XI of 1924. These concessions cannot be claimed by any other Provident Insurance Societies. Nor can they be claimed by any private provident funds whatever, irrespective of whether they had previously been exempted by Local Governments by a general or special order from the provisions of the Provident Insurance Societies Act, 1912.

These remarks refer to the money in the funds and to the payment by subscribers and contributions made by employes to these funds. The contributions by *employers to Provident Funds* stand on a totally different footing and are dealt with in paragraph 46, but the special privileges conferred by these particular sections do not apply to any funds which have not a recognised legal footing.

A special exemption has been granted [see paragraph 16 (16)] in the case of Railway Provident Funds but this applies only to the gratuities paid out of these funds in the event of the retirement or death of the subscribers.

19. *Meaning of the word "securities" as used in section 4 (3) (iv).*—The definition of the phrase "interest on securities" in section 8 of the Act should not be applied to determine the interpretation to be given to these words in section 4 (3) (iv), since the words as used in section 8 are in a specially restricted sense and do not cover, for example, interest on so typical a form of security as a mortgage. Nor should the meaning of the word "securities" in section 4 (3) (iv) be restricted to the ordinary limited legal sense in which it must always have reference to a loan. Provident Funds are entitled to invest in any trustee security, and it has not been the intention of Government to discriminate between the various classes of investments which are thus legally authorised. The word "securities" in section 4 (3) (iv) should therefore be interpreted as covering all securities mentioned in section 20 of the Indian Trusts Act.

20. *Perquisites or benefits not capable of conversion into money.*—The provision in section 3 (2) (ix) of the Act of 1918 that "any perquisite or benefit which is neither money nor reasonably capable of being converted into money" was not liable to tax, has been omitted in the Act, as the existence of that provision made it impossible to assess to income-tax, for example, rent-free residences in cases where the assessee had not the power to sub-let, while rent-free residences were liable to the tax where the assessee had the power to sub-let. An explanation has been added to section 7 (1) of the Act specifically providing for the taxation of perquisites in the form of rent-free residences.

Under section 7 (1) of the Act, all perquisites received by an employe in lieu of or in addition to salary or wages are liable to the tax. House-rent allowances and the value of rent-free quarters form additions to the remuneration of an employe; and even where residence in a particular town or building is necessary for the proper performance of the employe's duties, such allowances or perquisites cover expenses of a personal character which the employe would otherwise have to incur. They do not therefore "meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit" and are therefore not covered by the exemption in section 4 (3) (vi) of the Act and are taxable under section 7 or section 12.

Two conditions have to be fulfilled before the exemption specified in section 4 (3) (vi) can apply. The expenses incurred by the employe must be wholly and necessarily incurred in the performance of his duties as an employe; and the allowances or perquisites must have been granted by the employer with the set purpose of meeting the extra expense thus caused to the employe, and that extra expense only. It is thus a question of fact in each case whether a house-rent allowance or the value of rent-

free quarters is exempt from the tax, but the following examples will serve to indicate the lines on which the decision should be made:—

- (a) A currency officer is granted rent-free quarters in his currency office. Even though his residence in that office is necessary for the proper performance of his duties, he will be liable to the tax on the value of his rent-free quarters, since he would in any case have had to provide himself with a residence, and the perquisite does not therefore meet expenses wholly incurred in the performance of the duties of an office or employment of profit.
- (b) A firm in Calcutta makes a practice of providing its employés with rent-free quarters, and houses some of its employés in its business premises as resident clerks. The employés of the firm, including the resident clerks, will, as in the previous case, be liable to income-tax on the value of their rent-free quarters.
- (c) A Government office has its headquarters in Bombay, but proceeds for some months in the year elsewhere, and grants its ministerial establishment house-rent allowances or rent-free quarters in the place to which it proceeds with the specific object of providing for the maintenance of a second and, from the point of view of the grantees, unnecessary residence in order that they may perform their duties there. The allowance or the value of rent-free quarters will be exempt from income-tax.

In all cases where rent-free houses form part of the perquisites of an employé, the cash value of such a house to the occupier should, in no case, be deemed to be more than 10 per cent. of the salary of the employé.

The "Delhi moving allowance" and "Delhi Camp allowance" which is granted to the members of the office establishments of the Army Headquarters and of certain Civil attached offices of the Government of India during the period of their stay at Delhi and the Simla House Rent Allowance granted under Rule 19 of the Simla Allowances Code and the value of rent-free quarters in lieu thereof fall under example (c) above and are exempt from the payment of income-tax. Special allowances granted solely to meet the higher cost of living in a station such as Compensatory local allowances and the Cutch exchange compensation allowance are liable to the payment of tax.

21. *Casual gains.* [Section 4 (3) (vii).]—In order to obtain exemption as "casual," profits must comply with two conditions:—

- (1) they must not be the proceeds of a profession, vocation or employment, or arise from business, that is, from "any venture or concern in the nature of trade, commerce or manufacture." [See section 2 (4)], and
- (2) they must not be annual.

Both these conditions must be fulfilled. The exemption also is specifically not to apply to any gratuity to an employé for services rendered so as to avoid the possibility of any ambiguity in connection with the use of the word "gratuity" in section 7 (1). The following are illustrations of the effect of the provisions of section 4 (3) (vii):—

- (1) A purchases a house with a view to re-selling it at a profit. His profits from the transaction are liable to income-tax

- (even although it be an isolated transaction). B purchases a house for his own residence and later on sells it at a profit. His profit is not liable to the tax.
- (2) A wins a prize in a lottery or a bet on the race course. His receipts therefrom are not taxable. B is a book-maker. His profits from betting are taxable.
 - (3) A is a professional beggar. His receipts from mendicancy are not exempted from the tax by this sub-section.
 - (4) A makes a practice of speculating in the purchase and sale of shares. His profits therefrom are liable to the tax. B purchases Indian War Loan 1929-1947 at 95 redeemable at par. The premium received on redemption after a period of years is not liable to the tax. On the other hand, the yield from Treasury Bills arising from their issue at a discount and repayment at par after 12 months or some shorter period is liable to the tax under section 12, though as this yield is not interest, the tax is not deducted at the source under section 18 (3).
 - (5) A man writes a book. His receipts from its sale are taxable.
 - (6) Lump sum legacies are exempt; annuities granted under a will are not exempt.

22. *Income-tax Authorities.* (Section 5.)—(1) The *Central Board of Revenue* is appointed by the Governor General in Council. Its specific powers are mentioned in the various sections, *e.g.*; section 2 (6), 2 (11) (b), 5 (5), 18 (6) and 59. Rules for carrying out the purposes of the Act are made by the Central Board of Revenue which also issues instructions regarding the interpretation of the provisions of the Act and the rules, and is entrusted with the general administration of the Act.

(2) The head of the Income-tax Department of a province is the *Commissioner of Income-tax* who is appointed by the Governor General in Council. The rest of the income-tax staff in a province are subordinate to him and they are appointed and dismissed by him. His power of appointment and dismissal of Assistant Commissioners and Income-tax officers is, under section 5 (4) "subject to the control of the Governor General in Council," but the Governor General in Council exercises this control through the local Government under the provisions of the following order:—

"The Governor General in Council desires to utilise the agency of the Governor in Council of each Governor's province in the following matters only in relation to income-tax:—

- (i) the appointment by a Commissioner of Income-tax of any person to the substantive post of Assistant Commissioner of Income-tax or Income-tax Officer shall be subject to the previous approval of the Governor in Council.
- (ii) Any Assistant Commissioner of Income-tax or Income-tax Officer who has been dismissed or removed from office or whose increment of pay has been withheld by the Commissioner of Income-tax shall have a right of appeal to the Governor in Council.

While as regards the appointment or dismissal of such officials the Commissioner is subject to the control of the local Government, he has

full power to specify the functions to be performed by each official and the areas, persons and classes of income in respect of which these functions may be exercised.

The specific powers conferred upon him in regard to income-tax assessments are specified in sections 28 (1), 32, 33, 37, 54 (2) second Proviso, 64 (3) and 66 of the Act. In particular he is vested with power under section 33 to review any orders passed by any income-tax official, and he alone may, under section 66 of the Act, state cases for the opinion of a High Court.

(3) The functions of *Assistant Commissioners of Income-tax* are mainly appellate, but they also exercise supervision over the work of the Income-tax Officers. The particular powers conferred on them by the Act are set out in sections 28 (1), 30 (2), 31, 37, 38, 39, 42 (2) and 53.

(4) *Income-tax Officers* are the assessors. While section 64 of the Act specifies the particular Income-tax Officers by whom assessments shall be made, *i.e.*, prescribes that assessments shall be made in the case of a business by the Income-tax Officer of the area where the principal place of business is situated, and in all other cases by the Income-tax Officer of the area in which the assessee resides, sub-section (4) of that section provides that every Income-tax Officer shall have all the powers conferred by or under the Act on an Income-tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed. This particular provision was inserted mainly in order to permit of enquiries being made into the profits of a branch business by the Income-tax Officer of the place in which the branch is situated and in order to enable every Income-tax Officer to make enquiries regarding all income, profits and gains arising or accruing within the area to which he is posted, even though the assessment in respect of the particular income, profits or gains may not be made by him. Income-tax Commissioners should therefore secure by issuing instructions or otherwise that there is no overlapping in this matter and that the same person is not assessed to income-tax by more than one Income-tax Officer but should at the same time secure that all Income-tax Officers shall give the utmost assistance to the assessing Income-tax Officer in regard to any property, income profits or gains within their respective areas which are liable to assessment elsewhere.

While it is intended that the work of making assessments, of hearing appeals and of passing orders in review shall ultimately be carried out by separate officials known as the Income-tax Officer, the Assistant Commissioner and the Commissioner, as a complete whole time staff for income-tax work has not yet been appointed in many of the provinces, section 5 (4) makes provision for the continuance, until such whole time staff is engaged, of the existing system under which individual officers exercise the powers of an assessing authority in respect of particular classes of income and of an appellate authority in respect of others, while the reviewing authority is in certain cases also the appellate authority.

While the income-tax staff will as a rule be appointed in provincial cadres, there are certain classes of cases for which it may be advisable that assessments should be made by an all-India staff. Such, for example, are the cases of military officers and of officers of other departments serving directly under the Government of India who are liable to transfer

from one province to another; and there may be other cases such as the assessment of railway companies which at any time it may be considered advisable should be dealt with by a special officer for the whole of India. Sub-section (5) of this section has been inserted to make provision for the appointment of special officers in such cases.

23. *Salaries.* (Section 7.)—The income taxable under this head includes not only fixed salaries or wages and annuities or pensions, but also any fees, commissions, perquisites or profits received in lieu of, or in addition to, salaries or wages which are paid to an employé by or on behalf of any employer. Under the Act of 1918 the income chargeable under this head applied only to “salaries” in the above sense when paid by or on behalf of Government, a local authority or company, any other public body or association or by or on behalf of any private employer who had entered into an agreement with the Income-tax Officer to recover the tax on behalf of Government, but under the present Act it applies to all salaries paid by or on behalf of every private employer, the obligation to deduct income-tax from salaries being under section 18 (2) of the Act an obligation on every employer.

The proviso to sub-section (1) applies only to compulsory deductions made under the authority of Government and not to compulsory deductions made by other employers (see paragraph 18). The amount exempted under this proviso has, however, to be taken into account under section 16 (1) in computing the total income of an assessee for the purposes of determining whether he is liable to tax and the rate at which he is to be assessed. An assessee for example, who has a salary of Rs. 180 per mensem or Rs. 2,160 per annum and from whose salary a compulsory deduction is made by the authority of Government of Rs. 300 per annum of the nature referred to in this proviso is liable to pay income-tax on Rs. 1,860 at the rate applicable to an income of Rs. 2,160.

Under section 58 of the Act this proviso does not apply to super-tax that is, no allowance of this kind is made for super-tax purposes.

As regards “perquisites” see paragraph 20.

Language rewards and fees for conducting an examination, when the conduct of the examination is not part of the officer’s ordinary duties, are not chargeable as “salaries,” but as income “from other sources” under section 12.

For classes or portions of “salaries” which are entirely exempt from tax, see paragraphs 16 (1), (2), (4), (5), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (23), (24), and (25).

Income under this head is always included in the income of the year in which it is received irrespective of the period in respect of which it was earned, with the solitary exception that where an officer of Government takes an advance of pay, the tax is not chargeable on the advance, but the tax is charged on the full salary of the month in which the advance is recovered by deduction without any regard to the deduction.

A portion of a salary withheld under the orders of a Court is liable to tax.

24. *Salaries paid in India but outside British India.* [Section 7 (2).]
—See paragraph 1. This sub-section makes chargeable under this head, salaries paid from Indian revenues to Government employés in any part

of India and salaries paid by a local authority established in exercise of the powers of the Governor General in Council. All servants of Government or of such local authorities are, therefore, liable to pay tax on their salaries if they are employed in any part of India and irrespective of their nationality.

The words "or any servant of His Majesty" in this sub-section were inserted in the Act of 1918, so as to bring all servants of the Crown, whether British subjects or not within the purview of this sub-section, on the ground that it seemed unnecessary to give to persons who were not British subjects specially favourable treatment which was not accorded to British subjects:

The pay of officers whose services have been lent to, and whose salaries are paid by, Indian States are not chargeable to income-tax under this section unless they are drawn or received in British India; but the leave allowances and pensions of such officers are, leaving the question of the place of their payment aside, chargeable to income-tax. The Government of India recover contributions at fixed rates from the Indian States to meet the cost of leave allowances and pensions of officers in foreign service and make themselves responsible for paying the leave allowances and pensions of their employés earned in foreign service.

25. *Salaries, etc., paid outside India.*—Under exemptions Nos. 14, 15, and 16 quoted in paragraph 16 allowances or salaries paid in the United Kingdom to officers on leave or duty in that country and leave allowances or salaries drawn from any colonial treasury by an officer on leave or duty in the colony and the pensions of officers drawn from any colonial treasury or paid in the United Kingdom are exempt from the tax. The salaries and allowances of the employés of firms and companies should also be exempted from income-tax in those cases only where a private employer is bound under the terms of a contract, or has elected as a general measure to pay leave allowances to his employés in England. Where on the other hand there is no such obligation or general practice, such allowances should be liable to taxation. The same criterion should be applied to the taxation or non-taxation of pensions.

Pay and allowances drawn by officers from the Indian revenues which are earned by them by service outside India, are not liable to the tax unless they are drawn or received in India.

26. *Interest on securities (Section 8.)*—As regards sterling securities, see paragraph 15.

The interest chargeable under this section is the interest only on securities of the Government of India or of a local Government or on debentures or other securities for money issued by or on behalf of a local authority or company. It does not include the interest on debentures issued by firms, associations, clubs, or individuals the interest on which is chargeable under section 10 or 12.

With reference to the first proviso the Government of India War Bonds, 1920, 1921, 1922, 1923, 1925 and 1928, 5 per cent. loan 1945-55, Five-year 6 per cent. Bonds, 1926, Five-year 6 per cent. Bonds, 1927, Ten-year 6 per cent. Bonds, 1930, Ten-year 6 per cent. Bonds, 1931, Ten-year 6 per cent. Bonds, 1932 and Ten-year 5 per cent. Bonds, 1933, have been issued income-tax free.

The second proviso to this section prescribes that where a local Government issues a security as income-tax free, the income-tax on the interest thereon shall be payable by that local Government. So far as investors are concerned, therefore, securities issued income-tax free whether by the Government of India or by local Governments, stand on exactly the same footing, that is, income-tax is not payable on the interest received therefrom by the assessee, but the interest received therefrom is taken into account under section 16 (1) of the Act in determining the total income of the assessee for the purpose of deciding whether he is liable to income-tax and also for determining the rate at which he shall pay income-tax on his other income. The same remarks apply to Government securities purchased through the Post Office and held in the custody of the Accountant General, Posts and Telegraphs (see paragraph 16). Super-tax is, however, payable by the recipient in respect of such interest, since, under section 58 of the Act, the provisos to this section do not apply to super-tax.

For interest on other securities, which are entirely exempt from tax see paragraphs 16 (6), (7), (8), and (22).

For interest on securities held by Provident Funds, etc., see paragraph 19.

The interest on securities held by a Co-operative Society is liable to income-tax (see paragraph 16).

Where an assessee with an income from securities has obtained a loan from a bank for purchasing those securities, he may, on obtaining a banker's certificate as to the amount of the interest on his loan, set off the interest that he pays against the interest that he earns from the securities. It must be clear, however, from the certificate that the borrowing was definitely and solely for that purpose (see paragraph 69).

Income-tax (but not super-tax) in respect of income chargeable under this head is deducted at the source [section 18 (3)].

27. *Property. (Section 9).*—The tax is payable under this head in respect of property consisting of any building or lands appurtenant to a building by the owner of such property. Lands not attached to a building are not chargeable under this section. The income derived from vacant lands let out in urban areas for the purpose, *e.g.*, of storing materials is chargeable to the tax under section 12.

Buildings or lands occupied by the owner thereof for the purposes of his own business are not liable to the tax under this head. This particular provision was inserted in order to avoid the unnecessary complications in previous Acts under which the annual value of such property was liable to the tax under this head and a corresponding deduction was allowed to the owner under the head "business" (section 10).

It is to be noted that it is only the owner who is liable to pay tax under this head. Where a person derives an income from house property which he holds on lease, such income is chargeable under section 12—"other sources."

28. *Property—Definition of annual value. [Section 9 (2).]*—The tax is, under the head "property," chargeable in respect not of any actual rental or cash received, but of the "*bonâ fide* annual value." The *bonâ fide* annual value of a building is the full market value at which the build-

ing could be let from year to year irrespective of any charges by way of municipal rates or taxes thereon. It therefore differs from the actual annual rent payable on a long term lease or the actual rent payable on a yearly lease under a privileged rental or with tenant's liability to pay owner's rates or taxes. The only limitation on taking the full market value is that in cases where the property is in the occupation of the owner for the purposes of his own residence the "annual value" is restricted to a maximum of 10 per cent. of the "total income" of the owner. The phrase "total income" in this definition has the meaning given to it in section 2 (15) of the Act, *viz.*, income, profits and gains of such owner from all sources to which the Act applies and, therefore, does not include income derived from any of the sources specified in section 4 (2) of the Act, (such as, for example, "agricultural income"), which are exempt from the tax.

29. *Deductions allowed in respect of property.*—It is to be particularly noted that, as stated in paragraph 50, no deductions are permissible on account of any municipal or local rates or taxes in respect of property. Nor can any allowance be made for brokerage for raising loans on mortgages and legal charges relating thereto since such charges are in the nature of capital charges. The only deductions from the "annual value" permissible are those specified in section 9 (1).

30. *Proof of expenditure where deductions are claimed in respect of "property."* [Section 9 (1).]—The allowance on account of repairs, [*viz.*, one-sixth of the annual value in the case specified in clause (i), and in the case specified in sub-clause (ii), the amount permitted by that clause] is a fixed allowance which should be granted without proof of the actual expenditure in any year and irrespective of the amount of such expenditure. The allowances on account of the annual premium paid to insure the property against risk of damage or destruction or on account of interest on mortgage or annual charge or ground-rent or land revenue or of collection charges must, however, be supported by proof of the actual expenditure.

31. *Property. Insurance deductions.* [Section 9 (1) (iii).]—The only insurance deduction permissible is the amount of the annual premium paid to insure the property against risk of damage or destruction. In some cases owners insure against loss of rent. Where an owner asks for an allowance on account of the annual premium for such insurance it should be allowed if such owner agrees to pay tax on any amount recovered from the insurance company. Where no such allowance is claimed or allowed tax is not to be charged on the amount recovered from the insurance company.

32. *Property. Collection charges.* [Section 9 (1) (vi).]—As regards collection charges rule 7 fixes 6 per cent. of the annual value as the maximum amount permissible. Where a house has remained vacant for a period, this maximum, of course, would never be reached and in many cases there will be no collection charges. The maximum amount permissible should be reduced in all cases where a house has remained vacant for a period to 6 per cent. of the annual value as diminished by the amount allowed in respect of vacancies. Proof must always be given of the collection charges having been incurred. Rule 7 simply provides that, where there is proof of collection charges, such charges may be

allowed subject to the provision that in no case shall the amount allowed on account of collection charges exceed 6 per cent. of the annual value.

33. *Property. Allowance in respect of vacancies.* [Section 9 (1) (vii).]—No fixed rule can be laid down regarding the allowance to be granted in respect of vacancies under clause (vii). Property is taxed on the "annual value" which, as noted above, is the commercial rent of a house—the rent which it would fetch if let by the year. Where the property is let at an annual rental corresponding to the annual value it would be fair to allow a proportionate deduction corresponding to the period of the vacancy, that is, if it were vacant for half the year, half the annual value might be allowed. Property may be let on short lease for a period less than one year and fetch a rent for that period far in excess of what has been fixed as the "annual value," and in such cases no allowance obviously can be given. Where a claim is made on account of vacancies, the owner should be asked to state what the actual rental was that he had received for the period of the year during which the property was let and the amount allowed on account of vacancies should, under no circumstances, exceed the amount by which the rent received falls short of the annual value. There can, of course, be no allowance in connection with any property which is reserved by the owner for his private occupation. A claim on account of vacancies can only be entertained in connection with property that is usually let.

34. *Property. Limitation of total allowance.* [Section 9 (1).]—The proviso to section 9 (1), that the aggregate of the allowances made under that sub-section shall in no case exceed the annual value, was inserted owing to the new provision in section 24 providing for the set-off of losses under one head against income, profits or gains under any other head. Instances have occurred of buildings situated in extensive grounds or on valuable sites being mortgaged for sums the interest on which is far in excess of the "annual value." The result of this proviso is that the annual value of the property belonging to an assessee can in no case be reduced to a *minus* sum owing to the allowances, and that there can be no loss under this head to be set against income, profits or gains under any other head.

35. *Method of accounting for assessing income, profits and gains under sections 10, 11 and 12.* (See section 13.)—Owing to a High Court ruling, referred to in paragraph 12, regarding the definition of the word "income" the provisions in the present Act have been so worded as to make it clear that as regards income, profits or gains from business, professional earnings or the other sources mentioned in section 12, no uniform method of accounting is prescribed for all tax-payers, and that every taxpayer may, so far as is possible, adopt such form and system of accounting as is best suited for his purposes. The only restrictions are that the method adopted must be one that clearly reflects the income of the assessee in respect of the fixed period of "the previous year" and that it is the one regularly employed by him for the purposes of his business. If the tax-payer does not regularly employ a method of accounting which clearly reflects his income for the "previous year," the computation will be made in such manner as in the opinion of the Income-tax Officer does clearly reflect it.

There are two main systems of keeping accounts. There is firstly the cash basis system, where a record is kept of actual receipts and actual

payments, entries being made only when money is actually collected or disbursed. There is secondly, the mercantile accountancy system under which a profit and loss account is maintained and a comparison is made of the value of the stock in hand at the beginning and at the end of each year. Under this latter system entries are made in the accounts on the date not of receipt of money or expenditure of money, but on the date of transactions irrespective of the date of payment. When goods are sold, for example, an entry is made at once on the receipt side of the account, although no cash may be received at the time in payment of such goods; and an entry is similarly made on the debit side when a liability is incurred although payment on account of such liability may not be made at the time. It will be the method of accounting adopted for or by the tax-payer, therefore, that will determine the period within which any item of gross revenue or any deduction therefrom is to be accounted for, and which will determine whether particular allowances are or are not permissible.

It is for this reason that the Act does not contain a complete statement of the deductions or allowances that are permissible or not permissible in working out business profits or professional earnings, since certain allowances or deductions can only occur where the mercantile accountancy system is adopted. There can, for example, be no allowance for "bad debts" where the cash basis is the method of accountancy employed. Under the mercantile accountancy system, as noted above, an entry is made on the receipt side when a sale is concluded, although the money on account of such a sale has not been paid and in making up the accounts at the end of the year such entries are treated as receipts, and the tax is levied on these "book profits." It may happen that some of these "book profits" cannot be recovered; they are written off as "bad debts" when found to be irrecoverable; and since such "book profits" have been included in the income assessed to income-tax, the "bad debts" must be written off against the "book profits" in the year in which they are written off in the accounts as irrecoverable. Where the cash system is adopted, there can be no "bad debts."

Again, it will be the method of accounting that will determine the particular year in which allowances common to both systems of keeping accounts may be made. In sub-section (2) of section 10 of the Act provision is made for allowances on account of rent paid, interest paid on capital borrowed, the amount of premium paid in respect of certain classes of insurance, amount paid on account of current repairs, etc., and sub-section (3) of section 10 states that the word "paid" means "actually paid" or "incurred" according to the method of accounting upon the basis of which profits or gains are computed, *i.e.*, where the cash basis is adopted, it will be the date of actual payment that will determine the year in which such allowances may be made, whereas if the mercantile accountancy system is adopted, the allowances can be claimed in the year in which the liability to pay accrued.

36. *Method of accounting "regularly employed."* (Section 13.)—The method of accounting regularly employed by an assessee for the purposes of his business should, so far as possible, be the method adopted for working out his profits for income-tax purposes; but the Income-tax Officer has to decide whether that method of accounting is the one regularly employed for the purposes of the assessee's business and whether it

is such as to reflect clearly the taxable profits for the "previous year." In most cases this should cause no difficulty. Doubtful cases should be referred to higher authorities. As an example of the principles to be followed in settling doubtful cases two instances of such cases are given. It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community, but on the basis of cash payments in the case of transactions between themselves and their customers. Provided that the same system is continuously employed, there appears to be no reason why this particular practice should not be considered to be a "method of accounting regularly employed." Again there are cases where the various branches of a business are only closed down once in three or five years and where the accounts of the branches are not annually incorporated in the head-quarters business's accounts. In such a case it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to account owing to particular branches closing down in particular years.

The cases in which an assessee desires to change his accounting system should be rare and where such a request is made, the Income-tax Officer in considering it should, as in the similar case of a demand for a change in the "previous year" (paragraph 5), if he is prepared to allow the change, take steps to secure that no profits escape taxation on account of the change. While section 13 leaves it to the discretion of the Income-tax Officer to decide whether a particular system of accounting should be accepted or whether a change in the system of accounting should be allowed, the discretion of the Income-tax Officer in this matter can be questioned in the course of an appeal against an assessment under section 30, *i.e.*, it may be made one of the grounds of appeal in contesting the assessment of the profits.

37. Business deductions. General.—While, as stated in paragraph 35, it is not possible, owing to the variety of accounting systems, to prescribe exhaustive lists of deductions that are or are not permissible in the case of all businesses, section 10 (2) contains a list of allowances that are permissible in the case of all businesses. The following is a list of the deductions that are not permissible in the case of any business whatever the system of accounting may be that is adopted:—

- reserves for "bad debts" or for "provident" or other funds or any other purpose such as the equalisation of profits or dividends;
- expenditure of the nature of charity or presents;
- expenditure of the nature of capital;
- cost of additions to, or alterations, extensions or improvements of, any of the assets of a business;
- sums paid on account of income-tax or super-tax in India or elsewhere or any tax levied by any authority other than land revenue, local rates or municipal taxes in respect of the portion of the premises only which is used for the purposes of the business;

drawings or salaries of the proprietors or partners;*

† interest on the proprietors' or partners' capital including interest on reserve or other funds;

* NOTE.—*Cf.* Case No. 15 in Volume II.

† NOTE.—*Cf.* Case No. 11 in Volume II.

private or personal expenses of the assessee;
 rental value of property owned and occupied by the owner of a business for the purposes of the business;
 losses sustained in former years;
 any loss recoverable under an insurance or a contract of indemnity;
 depreciation of any of the assets of the business other than the depreciation allowed under section 10 (2) (vi);
 any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

38. *Business deductions. Irrecoverable Loans.* [Section 10 (2).]—Where an assessment is made of profits or income from a banking or money-lending business, loans which cannot be recovered should be deducted from the assessed profits of such business at the time when such loans can be definitely proved to be irrecoverable. For example, if a banker has lent out 5 lakhs of rupees and received Rs. 50,000 as interest but has during the same year lost an irrecoverable loan of Rs. 25,000, he should be assessed on Rs. 25,000. Similarly, if the same banker receiving Rs. 50,000 as interest on his loans suffers a loss of an irrecoverable loan amounting to one lakh during the same year, the income to be assessed to income-tax from the money-lending business in that year will be *nil*. These examples will apply whether the assessee had previously been assessed to income-tax or not.

This instruction will also apply to the assessment of other traders, where loans have been made in connection with the business and in which the loans are of the nature of the business and the loss is a true trading loss.

The irrecoverable loans in the sense referred to in this paragraph are sometimes confused with the "bad debts" described in paragraph 35, but they are of a totally different nature. Money lent out on interest is the stock-in-trade of a money-lender or banker and the loss of such stock-in-trade can clearly be regarded as a trading loss like the loss of the stock-in-trade of any other trader where the loss is not covered by insurance. In settling claims of this nature the question has always to be considered whether money-lending is, or is not, a part of the business of the trader in question. The investment of savings or occasional loans made to acquaintances cannot be considered to be loans made in the course of trading.

39. *Allowance on account of rent of business premises.* [Section 10 (2) (i).]—The allowance referred to in this clause is only in respect of that portion of the premises in which the business is carried on and the same limitation applies to all allowances relating to premises or buildings in clauses (ii), (iv), (v), (vi) and (viii). Where premises are owned by the owner of the business, no allowance of course is permissible since the owner is not liable to pay tax on the annual value of such premises under section 9. Where the trader resides in a part of the business premises, the full rental cannot be set against the profits and the Income-tax Officer must, in each case, determine the portion of the rent that may so be set off.

40. *Allowances on account of repairs of business premises.*—Where the assessee is himself the owner of his business premises, he is allowed as a deduction the amount spent on repairs each year on the portion of the

premises used for the purposes of the business under section 10 (2) (v); where he is the tenant of the premises, he is, under section 10 (2) (ii), allowed the amount expended by him on repairs if his lease requires him to execute repairs. Where the premises are occupied partly as a residence and partly for the purposes of a business, the same proportion of the disbursements on repairs should be permitted to be deducted as is taken in calculating the rent permissible under section 10 (2) (i).

41. *Business—Allowance in respect of borrowed capital.* [Section 10 (2) (iii).]—The allowance under this clause can only be given where payment of the interest is not in any way dependent on the earning of the profits. It cannot be allowed, therefore, in respect of any borrowings the interest on which is not payable unless profits are earned or the interest on which varies according to the amount of the profits earned. In all cases it will be a question of fact whether the payment of interest is or is not actually dependent on the earning of profits. No allowance can be made in respect of the share capital of companies or of the capital put into a firm by the partners; but a company is entitled to an allowance of the interest paid on its debentures and a firm to an allowance of interest on money borrowed under a mortgage. On the other hand, a firm alleging that it has no independent capital and that it is working only on capital lent by the partners at a definite rate of interest which must be deducted from the earnings of the firm before its profits can be declared, is not entitled to allowance under this section unless definite proof is given that a particular partner has made a legal loan to the firm, i.e., a loan under an instrument on which he can sue and under which interest at a fixed rate is to be paid to him annually irrespective of the earning of any *profits. Similarly the share of profits given to Mohammedan depositors in lieu of interest on borrowed capital cannot be allowed as a business expense.

Salaries or commission paid to a partner can, under no circumstances, be treated as a business expense.

No rule has been made under the "explanation" to this clause defining what Mutual Benefit Societies are to have the benefit of the 'explanation.' It has been found that the 'explanation', if applied, is likely to give more trouble to the societies than the present procedure. Executive instructions have however been issued that in the case of such societies (which appear to be peculiar to the Madras Presidency) where the taxable income is Rs. 5,000 or under and where the "shareholders" or "subscribers" reside within the limits of the circle of one Income-tax Officer, the company or society should not be assessed direct to income-tax, but the principal officer should furnish the Income-tax Officer with a list of the amounts paid out to subscribers showing the original subscriptions or capital invested and the interest thereon, and the Income-tax Officer should ascertain what particular recipients of these payments are liable to tax and should add the amount of interest that they have received to the income on which they would otherwise have been assessed, that is, he should assess the recipients direct.

42. *Business—Allowances in respect of insurance premia.* [Section 10 (2) (iv).]—The allowances under this clause are restricted to insurance policies taken out against the risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, and no allowance can be made on account of premia in regard to

other insurances. Further, any sums not actually expended on *premia* but merely set aside by a company or firm as an insurance fund are simply particular description of reserve and no allowance or deduction can be given in respect of such reserves.

The Act does not contemplate the deduction of *premia* on account of insurance against a loss of profit. If, however, the owner of a business elects to claim any such allowance, he should signify his intention to the Income-tax Officer—and if he makes a declaration in writing, undertaking generally to pay the tax on any amounts recovered from an Insurance Company under any such policy or policies, the allowance will be granted in respect of the *premia* for any such policies that he may have taken out not more than a month before the date of such declaration or that he may take out subsequent thereto. Where no allowance is asked or allowed in respect of such policy, any sums received from the Insurance Company on account of the policy will not be liable to tax.

43. *Allowances in respect of depreciation.* [Section 10¹ (2) (vi).]—The allowances permissible under this clause are prescribed in rule 8 and the information that must be furnished in order to obtain an allowance is set out in rule 9. It is only the particular classes of buildings, machinery, plant or furniture mentioned in rule 8 in respect of which the depreciation allowance can be claimed, and the buildings, machinery, plant or furniture for which depreciation allowance is claimed must be used for the purposes of the business. No allowance can be claimed on account of depreciation, for example, of any portion of a building which is used as a residence by the assessee. Further, the buildings, etc., must be the property of the assessee. No allowance can be claimed if they are leased from others.

The percentage allowance is on the original cost of the machinery, etc., *to the assessee* and not the original cost to a previous owner if it had been purchased from a previous owner. The rates of depreciation allowance fixed in rule 8 are fixed rates for the whole of India. Depreciation at those rates must be allowed each year when there are sufficient profits, and only the excess of the depreciation allowance over profits can be carried forward from year to year until absorbed, and this practice must be followed whether the depreciation allowance is adjusted in the accounts of the assessee or not and irrespective of the amount shown in the accounts. It is for this reason that in the form of returns of income prescribed in rules 18 and 19 any amounts entered in the accounts of an assessee for the depreciation of any of the assets of the business must be written back as the amount allowed for income-tax purposes is the amount prescribed in the rules and not the amount entered in the books of the assessee.

This clause provides for the depreciation of furniture, but it may not suit the convenience of particular traders to ask that a depreciation account should be kept up for petty items of furniture and a depreciation allowance on account of furniture should, therefore, be granted only in cases in which it is asked for, in which event the cost of replacement should not be allowed; where such depreciation allowance is not asked for, the cost of replacement should be allowed in the year in which the furniture is replaced.

Whatever depreciation allowances are granted, it will be necessary to maintain an account showing the original cost to the assessee of the plant, the amount of the annual allowance, the amount of the allowances already granted and the balance still to be allowed.

The percentage allowance fixed in the rule for the permanent way of electric tramways only covers cases where the number of car miles per mile of track does not exceed 125,000 car miles per annum. Where the number of car miles per mile of track per annum exceeds 125,000, special terms will have to be made in each case. Similarly special consideration should be given to each case where there are special circumstances, such as exceptional gradients, the compulsory use of wood paving, etc., tending to show that the car mileage does not fairly represent the wear and tear of the track. The cost of renewing concrete foundations should be allowed as a trading expense as and when incurred, provided that, if the renewed foundations are an improvement on the old ones, so much of the cost of the renewed foundations as represents such improvement should not be admitted as a trading expense. Amounts received for the old materials, whenever renewals are effected, should be credited against the cost of the renewals, and if the old materials are not disposed of at the time or are used for other purposes, their estimated value should be deducted, subject to adjustment if necessary, as and when the old materials are disposed of. The percentages fixed for the depreciation of the permanent way are based upon the estimated life of a track from a consideration of the number of car miles per mile of track, and consequently these percentages may vary in connection with the same undertaking. It must be clearly understood that the revision of the life of a track need not necessarily be deferred till the whole track is renewed, because it may become clear before that date that revision is necessary either in the direction of increasing or decreasing the average life. As regards the rate for general plant, machinery and tools, all other plant and machinery including workshop tools but excluding loose implements, office furniture and small articles which require frequent renewals (expenditure on which is allowed as a business expense against revenue), should be lumped together and the rate of 5 per cent. depreciation should be allowed thereon in addition to the cost of repairs. No depreciation should be allowed on overhead equipment, *i.e.*, trolley wires and connections: all expenditure on maintenance and renewals should be charged as working expenses, as and when occurred.

No depreciation allowances are granted to railways on account of depreciation of their rolling stock as renewal charges are allowed as a business deduction.

As stated in paragraph 37 no allowance can be made on account of the depreciation of the assets of a business other than the particular items mentioned in this sub-clause and in rule 8. No depreciation allowance, for example, is permissible to provide for the amortisation of capital sums paid on account of the purchase of the lease of a mine or for the depreciation of wasting assets such as coal. Depreciation allowances should, however, be allowed for sinking shafts, tramways and sidings in coal mines, which are included in the term "plant."

Shares and securities held as part of the capital of a business should be similarly dealt with. So long as shares or securities continue to be held

by a company, firm or individual as part of his or its capital, any depreciation or appreciation in their market value is outside the scope of the Income-tax Act; and similarly, when the value of shares and securities so held (for example, the securities constituting the reserve fund of a bank or other company) is realised, the transaction is a capital transaction, and no account should be taken for income-tax purposes of any profit or loss resulting from the sale. On the other hand, where an individual, company or firm habitually uses part of his or its resources in the purchase of securities or shares with a view to obtaining profit on their sale and the subsequent reinvestment of the proceeds, the individual, company or firm is, in altering his or its investments, carrying on a trade for the sake of obtaining profit therefrom, and the profits secured or losses incurred are trade profits or losses which must be taken into account in determining the assessment to income-tax. It will, therefore, always be a question of fact to be decided on the merits of each case whether the changes in investment are of sufficiently systematic a character to constitute the exercise of a trade, but if they are, the profits therefrom are liable to assessment, and an allowance must be made for any losses in calculating the amount of tax payable.

44. *Business—Obsolescence allowances.* [Section 10 (12) (vii).]—It must be particularly noted that the allowances under this clause can only be given where the machinery or plant *becomes obsolete*. Where machinery or plant is sold for reasons other than that it has become obsolete, no allowance can be given. Where a machine is sold no allowance can be given if the facts present evidence that the machine is not obsolete.

The amount allowed for obsolescence is, again, calculated upon the original cost *to the owner*. The amount to be given is the amount of such original cost to the owner as reduced by the depreciation allowances under clause (vi) and the amount for which the machine is actually sold or its scrap value. For example, a machine costing Rs. 10,000 with a 10 years' life is sold after 5 years for Rs. 2,000. The original owner gets Rs. 5,000 for depreciation and nothing for obsolescence as the machine is not scrapped or sold on account of obsolescence. The second owner gets an allowance based on a 5 years' life, and as the cost of the machine to him was Rs. 2,000, his annual allowance is Rs. 400. If through some flaw the machine is scrapped as useless after three years, then in the year in which it is so scrapped the second owner can claim Rs. 800 for obsolescence. If, on the other hand, the machine lasts 5 years or more in the hands of the second owner, no allowance for obsolescence is permissible.

45. *Allowance on account of rates or taxes.* [Section 10 (2) (viii).]—The allowance under this clause covers only the land revenue and local rates or municipal taxes paid in respect of the portion of the *premises* used for the purposes of the business. In assessing income from business a local rate or tax which is payable irrespective of whether profits are made or not should be treated as expenditure incurred *solely* for the purpose of earning profits or gains within the meaning of section 10 (2) (ix) if the rate or tax is not an admissible deduction under section 10 (2) (viii).^{*} No allowance can be given on account of any other rates or taxes whatsoever. All rates and taxes, therefore, whether levied on the profits of a business or which are charged on the proprietor of a business in

^{*} Cf. Case No. 16 in Volume II.

respect of anything other than the actual portion of the premises used for the purposes of the business, must be disallowed. (See also paragraph 50 and Case No. 6 in Volume II.)

46. *Miscellaneous business deductions.* [Section 10 (2) (ix).]—While the Act makes no provision for contributions by employers to private provident funds constituted for the benefit of their employés being exempted from the tax (see paragraph 18), contributions to such provident funds *by the employers* should be allowed as a business expense in all cases where the funds are constituted as irrevocable trusts and where the employers' contributions cannot be recovered by the employers. Where, however, such funds remain in the hands or under the control of the employers, no contributions by the employers can be allowed as a business expense; but in such cases actual payments made to employés leaving the service of the employer should be allowed as a business expense in the year in which such payments are made, so far as such payments are made from the contributions of the employers whether in that year or in preceding years.

The same remarks apply to superannuation funds or reserves for the purposes of providing pensions to ex-employés. Actual sums paid as pensions to ex-employés or to the widow or children of an ex-employé should, however, be allowed as a business expense where the pensionary payment is a fixed or recurring one, but no claims on account of "pensions" should be entertained where the "pensions" are paid to persons who have or who at any time had a share or interest in the business.

The following principles should be observed in dealing with claims that *bonâ fide* expenditure for the welfare of the employés of a business should be allowed as a business expense. No contributions towards expenditure incurred by outside bodies which may benefit the employés of a company or firm incidentally with members of the general public, should be allowed, such as contributions for the support of clubs, recreation grounds, religious institutions, dispensaries, hospitals, schools and the like. If, on the other hand, an assessee maintains a school or a dispensary solely for the benefit of his employés, reasonable expenditure on the *upkeep* of such an institution should be allowed as a working expense. Similarly, expenditure incurred in the maintenance of a conservancy staff employed to keep the surroundings of the dwellings of the employés of a concern in a sanitary condition should be allowed. In no case, however, should any capital expenditure be allowed, such as, for example, the amounts expended on the construction of latrines, drains, water-works or hospitals.

47. *Method of converting the net profits of sterling companies into rupee for the purposes of income tax.*—Where the business of a sterling company is transacted entirely in India, there is no need for the Income-tax Officer to look at the sterling accounts as he can get a record and ask for a return of the transactions in rupees. He should act in the same way in cases where the profits of the Indian branch of a company operating in other countries can be separately ascertained. In the case of a company operating through local branches in different countries where the profits of the Indian branches cannot be ascertained separately but have to be deduced from the total sterling profits of the company from all its operations, the net profits of the company for the purposes of

assessment to Indian income-tax should be converted into rupees at the rate of exchange ruling on the last day of the year to which the account relates unless the Income-tax Officer is able, by an examination of the accounts, to ascertain the average rate of remittances throughout the year and to deduce from that the rupee figure of profits.

48. *Premia on issue of shares.*—The premia received by a company on issue of shares are capital receipts, and, as such, not chargeable to tax. In the same way the cost of issuing shares is capital expenditure and cannot be allowed as a deduction for income-tax purposes.

49. *Income from "other sources."*—*Deductions.* (Section 12).—The interest paid on money borrowed for the purchase of shares or securities can only be set against the income obtained from the shares or securities where it is proved either by a banker's certificate or otherwise that the borrowing has been definitely and solely for that purpose; but where such proof is afforded, an allowance should be given.

50. *Deductions on account of taxes paid.*—No deduction is permissible in computing the income, profits or gains on account of any taxes or rates paid in respect of such income, profits or gains except that a local rate or tax which is payable irrespective of whether profits are made or not (see paragraph 45) is to be allowed as deduction from income from business. Section 10 (2) (viii) of the Act allows as a deduction from business profits sums paid on account of land revenue, local rates or municipal taxes in respect of premises used for the purposes of a business. This specific provision has been inserted because the local rates paid on account of such premises are usually in the nature of a payment for services rendered (*e.g.*, by supply of water, conservancy arrangements, etc.), but that allowance is closely restricted to a local tax or rate levied *in respect of the premises* used for the purposes of the business. No deduction is allowed for any other local rate or tax such as, for example, local taxes varying according to the income or profits of a business. Nor is any deduction on account of a local rate or tax on property allowed from the annual value of property which is taxable under section 9. Similarly no allowance is permissible on account of income-tax or super-tax paid by an assessee. Where property, profits or gains are liable to taxation in other countries or by other authorities in British India all these authorities are taxing the same property or profits for different purposes. Attention is invited to the ruling of the High Court at Patna (Case No. 6 in Volume II) in which it was held that the amounts paid for cesses by a person deriving an income from rents of collieries and from royalties on the amount of coal raised from the collieries are not to be deducted in computing the amount of his assessable income, and in which it was clearly stated that "the payment of a tax which is conditional on the making of an income and which has to be calculated on the amount of such income after it has come into existence cannot be said to be expenditure for the making of such income."

Reference is also invited to Case No. 7 in Volume II in which the High Court of Madras held that in computing the profits of a non-resident company under the provisions of rule 33, the taxes payable in other countries in respect of the profits of the company are not to be deducted.

51. *Taxation of a Hindu undivided family. (Section 14.)*—A Hindu undivided family is treated as a separate entity for income-tax purposes. It is taxed like an individual at a graded scale according to its total income and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax or super-tax in respect of their separate income. This applies even in cases where the amount of the income of the Hindu undivided family is less than Rs. 2,000 and is, therefore, not liable to taxation in the hands of the manager of the family. The same remarks apply to super-tax.

The taxation of the income of a Hindu undivided family thus differs from the taxation of the income of an unregistered firm since where the profits of an unregistered firm are not liable to taxation in the hands of the firm, such profits are taxed in the hands of the individual partners both for the purposes of income-tax [section 14 (2) (b) and section 16 (I)] and super-tax (section 55 proviso), and where the profits are taxed in the hands of the unregistered firm, the share of such profits of each partner is included in his 'total income' for the purpose of determining the rate at which he shall pay income-tax on his other income [section 16 (I)].

For the method of serving notice or requisition on a Hindu undivided family see paragraph 97.

52. *Taxation of a firm.*—For the difference between a registered and an unregistered firm see paragraph 9.

While income-tax is leviable on the profits of a registered firm at the maximum rate (see Finance Act), and while under section 48 (2) a member of a registered firm is entitled to get a refund in cases where the maximum rate is greater than the rate applicable to his total income, it is desirable that, so far as possible, such refunds should be avoided. Where, therefore, the individual partners in a registered firm file their returns of personal income at the same time as the return of the income of the firm, the Income-tax Officer, on being satisfied that the whole of the profits of the registered firm are accounted for in these personal statements, should charge the partners direct at the rate appropriate to their total income. The liability of the registered firm for the tax assessed upon the profits of the firm will, however, remain unless and until the tax assessed upon the individual partners has been recovered from them.

For the method of setting-off a loss of profits of a registered firm against other income of a partner see paragraph 69.

In computing the total income of a member of a registered firm or unregistered firm for the purposes of income-tax or super-tax there should be included in that total income "such an amount of the profits or gains of the firm as is proportionate to his share in the firm." This particular phraseology has been adopted in section 14 (2) (b) and in the proviso to section 55 in order to make it clear that it is the proportionate share of a partner in the whole of the assessable profits of a firm that is to be taken into account in determining his total income, and not merely the amount that he removes from the possession of the firm. Some partnership deeds, for example, provide that the partners cannot remove more than a certain proportion of the profits in any year or, again, that a certain proportion of the profits must be distributed in charity. It is now made clear in the Act that it is the whole of his proportionate share

in the total assessable profits of the firm and that is to be taken into account and that that proportionate share cannot be reduced by any consideration of how those profits are utilised.

For the method of dealing with a change in the constitution of a firm see paragraph 72.

For liability in cases of discontinuance of business owned by a firm see paragraph 72.

For the method of serving notice or requisition on a firm see paragraph 97.

53. *Exemptions on account of life insurance.* (Section 15.)—Under the provisions of section 7 (1) proviso and section 15 an abatement of income-tax is given, after the assessment of the tax has taken place, on such portion of an assessee's income as may have been—

- (i) deducted from his salary under the authority and with the permission of the Government for the purpose of securing a deferred annuity to him or making provision for his wife or children (section 7 (1) proviso);
- (ii) paid by him to an Insurance Company in respect of an insurance or deferred annuity on his own life or on the life of his wife; or
- (iii) paid by him as a contribution to any of the provident funds mentioned in paragraph 18:

Provided that the total amount on which an abatement will be permitted under this provision may not exceed one-sixth of the total income of the assessee.

It is to be particularly noted that the insurances in respect of which this concession is granted are insurances *on the life of the assessee himself or of his wife*, and not any other form of insurance whatsoever. The solitary exception is in the case of a Hindu undivided family in the case of which insurances are permissible *on the life* of any male member of the family or of the wife of any such member and not merely on the life of the head or manager of the family.

For the purpose of an abatement claimed by an assessee under this section insurance premia payable in sterling should be converted at the rate of exchange on force on the day on which the premium payment was made in cases where the assessee is unable to state the actual cost of remittance.

A claim for abatement under this section must, if the payment is made otherwise than by a deduction from salary, be supported either—

- (a) by the original receipt of the Insurance Company or fund;
- (b) where the claim is made by a servant of the Government or of a local authority, by a copy of the original receipt presented along with the original to the officer who pays the salary and attested by that officer who should, after such attestation, return the original with a note endorsed upon it that it has been produced and allowed for, a copy being attached to the bills sent with the list of payments; or
- (c) by a duplicate receipt or certificate of payment given by the Insurance Company or provident fund, provided a certi-

ificate is given that the original receipt is lost or is not forthcoming.

Where the Income-tax Officer is satisfied that none of the above prescribed documents can be produced without an amount of delay, expense or inconvenience, which, under the circumstances of the case, would be unreasonable he may accept such other proof of payment of the premium as he may deem sufficient.

Abatement on account of insurance may be given effect to by the person deducting income-tax from salary at the time of payment under section 18 (2).

Where the payment on account of insurance premia, etc., is not claimed at the time when tax is deducted from salary, it may be claimed in the assessment and in the return given by the assessee under section 22 (2).

While strictly speaking abatements on account of insurance premia should only be made in assessing the income of the year in which the premia were paid, the rigid enforcement of this interpretation is likely to cause considerable inconvenience to assesseees who desire that the abatement should be given effect to when tax is deducted from their monthly salary, particularly in cases where the premia have been paid to foreign companies towards the end of a financial year and the receipts for the premia are not forthcoming until the following financial year. In such cases abatements of insurance premia may be allowed by officers responsible for deducting income-tax from salaries under section 18 (2) at the time of payment of the salary provided that the premia in respect of which abatement is claimed have been paid within six calendar months, ending with the close of the month for which the salary is drawn.

While the officers responsible for deducting income-tax at the source under section 18 (2) of the Act should allow an abatement where claimed, they need not carry out a check to see whether the abatement claimed under this section exceeds one-sixth of the salary of the officers concerned. This can be looked after by the Income-tax Officer to whom returns are furnished under section 21. The deducting authority should, however, see that claims for such abatements are made within the period prescribed.

It is to be particularly noted that this abatement does not apply to super-tax, section 15 being made inapplicable to super-tax by section 58.

54. *Tax deducted or collected at source to be included in income.*—Section 16 (2) (which provides that the amount received by a shareholder in a company by way of dividend shall be increased by the amount of income-tax payable by the company in respect of the dividend received) and section 18 (4) (which provides that where income-tax is deducted at the source from salaries and interest on securities, the tax so deducted shall, for the purposes of computing the income of an assessee, be deemed to be income received) have been inserted in order to make it clear that in the cases of taxation at the source and of the deduction of tax at the source it is the gross amount of the income (*i.e.*, including the tax deducted) which is to be taken into account in determining the rate at which an assessee shall be liable to income-tax on the rest of his income and also his income for liability to super-tax.

55. *Restriction of income-tax where margin of income above a certain limit is small. (Section 17.)*—Section 17 is designed to remedy the anomaly which previously existed where an assessee with an income just in excess of one of the stages in the Finance Act and therefore liable to pay income-tax at a higher rate than if his income were just below that stage, found himself, after the payment of the tax, worse off than he would have been, had his taxable income been below that stage.

Illustration.—

Income.	Tax payable if section 17 had not been passed.	Tax payable under section 17.
1,999	<i>Nil</i>	<i>Nil</i>
2,000	52-1	1-0
2,020	52-10	21-0
4,999	130-3	130-3
5,000	156-4	131-3

The marginal relief allowed under section 17 and the deductions referred to in section 16 should not be regarded as alternatives. The correct method of working the two sections concurrently is as illustrated in the following example:—

If a man's total income is Rs. 5,010 and he pays Rs. 100 as Insurance premia, the tax he should pay is that on Rs. 4,999 *minus* Rs. 100 (=Rs. 4,899) at five pies *plus* Rs. 11.

56. *Deduction of the tax at source.*—Section 18 of the Act provides for the *deduction of tax at the source* as distinguished from *taxation at the source* referred to in paragraph 10. It provides for the tax being deducted by the persons responsible for making payments of "salaries" or "interest on securities" before such payments reach the hands of the recipients. The tax so deducted is paid over by the persons making the deduction to the credit of the Government of India within the period specified in rule 10 along with a statement giving the details shown in rules 11 and 12. Such deductions of income-tax are, under sub-section (5) of section 18, treated as payments of income-tax on behalf of the persons from whose income or interest the deduction was made and credit is given to them in the assessment of their income if an assessment is made of their other income. The form of return of income that has to be made under section 22 (2) prescribed in rule 19, therefore, provides for the tax previously charged upon the income being set off against any additional charge, while section 48 (3) provides as an alternative for a refund in cases where the rate deducted is greater than that applicable to the total income of the assessee.

Any person required to make a deduction under section 18 who fails to do so, may himself, under sub-section (7), be deemed to be personally in default in respect of the tax while he is also liable to be prosecuted for an offence punishable under section 51 (a).

Persons making deductions at the source are indemnified for the deduction under section 65.

The provisions of section 18 do not apply to super-tax (section 58).

The provisions of this section obviously cannot apply to cases where the payments are made outside British India as, for example, the payment of "interest on securities" in Indian States or in foreign countries or the payment of "salaries" by foreign employers to residents in British India. It is for this reason that section 19 of the Act specifies that in any case where income-tax has not been deducted in accordance with the provisions of section 18, the tax is payable by the assessee direct. This provision covers, not only cases where the employer or the person paying "interest on securities" does not reside in British India, but also cases where owing to an assessee's salary being less than Rs. 2,000, income-tax has not been deducted.

57. *Deduction at source of tax on "salaries."*—The Act of 1918 provided that where a payment was a non-recurring payment, the tax should be deducted at the rate appropriate to that particular sum as if it were the whole of the assessee's income, and that where a payment was a recurring payment, the tax should be deducted on the assumption that the total income of the assessee amounted to twelve times the recurring sum. As these provisions gave rise to a considerable amount of unnecessary trouble to assesseees and their employers as well as to income-tax authorities, section 18 (2) of the Act now provides that deductions from salary shall be made at a rate which should approximate as closely as possible to the rate appropriate to the total assessable income of the assessee under the head "salaries," and it further empowers the person deducting income-tax from "salaries" to rectify, in subsequent deductions, mistakes made in previous deductions. Thus, if an employé's regular monthly salary is Rs. 500, the tax would be deducted by the employer at the rate appropriate to Rs. 6,000, but if such an employé received a commission or bonus or arrears of pay or officiating allowance amounting to Rs. 5,000, the employer is empowered not only to make deductions in future at the rate appropriate to an income of Rs. 11,000, but also to make up the deficiency in previous collections owing to the lower rate having been applied.

The obligation to deduct income-tax under this head now applies to *all employers*.

For the power of an employer to allow abatements on account of insurance premia see paragraph 53. As regards private employers, it may be noted that it is open to them to make these allowances on account of insurance premia or not according as it may suit the convenience of themselves and their employés as, if such rebate is not given when the tax is deducted at the source, it may be claimed by the employé in the following year either as a refund or a set-off against the amount due by him if he is assessed under section 23.

As regards the meaning of the word "salaries" see paragraph 23.

For the deduction from "salaries" of arrears of tax due see paragraph 87.

58. *Deduction at source of tax on "interest on securities."*—(See paragraph 26.) The only securities of the Government of India (other than income-tax free securities) from the interest on which income-tax is not deducted in advance are Treasury Bills.

As the person paying interest on securities has no information regarding the total income of the person to whom the payment is made, section 18 (3) provides that deductions of income-tax from "interest on securi-

ties" shall be made at the maximum rate fixed by the Finance Act. Where the total income of the person receiving the interest on securities is less than the income to which the maximum rate applies, he is entitled, under the provisions of section 48 (3), to claim a refund. In order to simplify the procedure in connection with refunds, section 18 (9) makes it obligatory upon the person deducting income-tax from the interest on securities to issue to all security-holders a certificate in the form prescribed in rule 13 or 13A specifying the amount of tax deducted from the interest and the rate at which it has been deducted. The form of certificate attached to rule 13 is suitable for Government securities only, while that attached to rule 13A provides for securities issued by local authorities and companies and covers the case of securities payable to bearer. It frequently happens, however, that security-holders hand over their securities and bonds to their bankers for collection. In that event the certificate given by the person deducting the income-tax from the security would be given to a bank for a whole block of securities. In such a case the Income-tax Officer should accept a certificate from the bank in the following form, and act upon it as if it were a certificate received direct from the person deducting income-tax from the security:—

"We hereby certify that interest on the various securities specified on the back hereof was collected by us on behalf of _____ and that we received payment or were credited with the proceeds thereof (less income-tax as stated on the other side) amounting to Rs. _____

Signature of Banker.

Address.

Date.

To be signed by the claimant.

I hereby declare that the securities on which interest as above specified has been received are my own property and were in the possession of _____ at the time when income-tax was deducted.

Signature.

Date.

(N.B.—The securities to be produced when required in support of any claim.)"

REVERSE OF FORM.

Schedule of securities.

The number and description of securities to be entered in consecutive order.						Aggregate amount of interest.	

A person who has other income liable to tax may, instead of claiming a refund, get the amount set off against the amount due from him in the assessment made on him under section 23 by filling up the form prescribed in rule 19.

The certificate under section 18 (9) must be taken by the Income-tax Officer of the area in which the claimant or assessee is assessed or resides (see rule 39) as conclusive evidence of the payment of the tax, both where

a refund is claimed in cash and where a set-off against the tax assessed on other income is claimed.

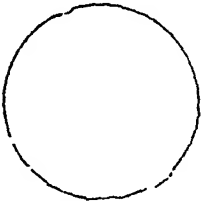
While these arrangements will facilitate the making of refunds, it is desirable that refunds should be avoided as far as possible. There are, for example, certain institutions, authorities and funds, the income of which is exempt from tax under the provisions of section 4 (3). Similarly there are persons whose assessable income is less than Rs. 2,000 and who are not, therefore, liable to tax. There are other cases where the Income-tax Officer may be satisfied that the income of a holder of securities while liable to tax is not likely to fluctuate so widely as to alter the rate appropriate to the total income. In such cases the Income-tax Officer may issue a certificate authorising the person paying the interest on Government securities to make no deduction of tax or to deduct tax at a lower rate than the maximum. Such a certificate might be in the following form:—

Income-tax Office _____
Dated _____ 192 .

To _____

I hereby authorise (1) _____

to deduct income-tax at the rate of (2) _____ pies in the rupee when paying the interest on the following securities to their present holder (3) _____
This authorisation will remain in force until cancelled by me.



Income-tax Officer.

Description of securities.

(1) Name and address of person paying the interest. (2) Rate of Income-tax sanctioned. (3) Name of person receiving interest.

Such certificates when issued should remain in force until they are cancelled and should not be required to be renewed annually.

Political Officers have been authorised to dispose of applications for refund of income-tax from residents of an Indian State who own securities whether of the Government of India, a local authority or a Company or hold shares in a Company in British India and are not and have never been assessed in British India, or have never been formally declared not to be liable to income-tax in British India. The refund of tax in such cases will be made from the British Indian treasury under the control of the Political Officer concerned or where there is no treasury under the Political Officer, from the prescribed British Indian treasury. In other cases, the officer in charge of the British Indian treasury in an Indian State or any other person paying the interest on securities should grant to residents in Indian States at the time of payment of interest,

the certificate of deduction prescribed by Rule 13 of the Indian Income-tax Rules, 1922, for presentation to the Income-tax Officer concerned in British India from whom any refund of tax to which the person receiving the interest is entitled may be obtained. In order that the Political Officer may know whether the applicant is as a matter of fact assessed in British India or not or has been declared not to be liable to income-tax in British India, so that he may determine whether he should deal with the application or not, Income-tax Officers in British India making assessments on residents in Indian States or declaring them not liable to tax, have been instructed to communicate to the Political Officer in the State concerned, the bare fact of assessment, or of the person concerned having been found not liable to tax without any further particulars. Political Officers from the information thus received can compile an index, to which they can refer when an application for refund is received to ascertain whether the application is one that they should deal with or not. If the applicant's name does not appear in the index, the Political Officer should dispose of the case himself, but if his name appears in the index, as an assessee or a person declared not to be liable, the Political Officer should refer him to the Income-tax Officer who assessed him in British India. This procedure has no statutory force and has been introduced solely for the convenience of residents in Indian States who may apply for refund of Indian income-tax under section 48 of the Indian Income-tax Act, 1922. It is, however, restricted to residents in Indian States who are not and have never been assessed to income-tax in British India, or have never been formally declared not to be liable to income-tax in British India. Under rule 39 of the Indian Income-tax Rules, 1922, which is still in force, a resident in an Indian State who, for example, owns shares in several companies, with headquarters in different places, has to submit applications for refund of income-tax accompanied by a regular return of his total income from all sources in British India to the Income-tax Officer at each such place, and it was therefore to meet the convenience of such residents in Indian States that this procedure has been promulgated. If, however, any particular resident in an Indian State does not propose to take advantage of this convenient procedure, he is at liberty to proceed under rule 39 of the Indian Income-tax Rules and to apply to the Income-tax Officer or Income-tax Officers concerned in British India for the refund of income-tax. In order to avoid the possibility of double refunds of income-tax being made—once by the Political Officer and a second time by the Income-tax Officer concerned, the Income-tax Officers should at once report to the Political Officer concerned all cases in which they have sanctioned refunds under rule 39 of the Indian Income-tax Rules to residents in Indian States who are not and have never been assessed to income-tax in British India, or have never been formally declared not to be liable to income-tax in British India. The following special instructions should be observed in dealing with these applications:—

1. In the case of a promissory note, debenture, stock, or other security or shares in a company in British India, the owner of the security or shares claiming a refund shall present to the Political Officer:—

- (a) an application in Form A, declaring truly therein his income from all sources in British India in the income-tax year

last preceding that in which the interest is to be drawn, or in the case of dividends, the year in which they were declared with the declaration below the form duly signed, and

(b) a statement in Form B, showing the details of the securities or shares held by him.

2. On receipt of the application and the statement the Political Officer may, after making such enquiries as he may deem necessary as to the total income of the applicant, issue a certificate of refund in Form C in the case of securities and in Form D in the case of shares, if he is satisfied that the applicant is liable to tax at less than 18 pies in the rupee.

3. If the applicant hands over the certificate of refund to the person empowered to pay the interest on the security, that person shall deduct from the interest due on such security only such sum as is the difference between the amount of tax chargeable at 18 pies in the rupee and the refund payable in accordance with the certificate of refund, and shall pay to the applicant the balance.

4. (1) If no certificate of refund is presented at the time the interest on the security of the Government of India is claimed, income-tax at 18 pies in the rupee shall be deducted from the interest due and the balance paid.

(2) If a claim for refund is made within one year from the end of the year to which the claim relates, the person empowered to pay the interest shall, on production of the certificate of refund, pay or authorise payment in case of such refund as may be due.

5. The Treasury Officer in charge of the Political treasury (or the prescribed treasury in British India if there is no British Indian treasury under the control of the Political Officer concerned) will pay the amount of refund on account of dividends if the certificate of refund granted by the Political Officer is presented to him. The claim for refund should be made within one year from the end of the year to which the claim relates.

FORM A.

Application for refund of Income-tax.

I of
do hereby state that my income from all sources in British India during the year
ending on the 31st March 19 , amounted to Rs.
only as shown in the enclosed statement.

I therefore pray for a refund of
Rs. under " Securities."

Signature

I hereby declare that what is stated herein is correct.

Signature

Dated 19 .

Notes.

1. The application should be accompanied by a return of total income in the form prescribed under section 22, unless the applicant has already made such a return to the Income-tax Officer.

2. The application for a refund should be made to the Political Officer in whose political charge the applicant ordinarily resides.

3. The application may be presented by the applicant in person or through a duly authorised agent or may be sent by post.

last preceding that in which the interest is to be drawn, or in the case of dividends, the year in which they were declared with the declaration below the form duly signed, and

(b) a statement in Form B, showing the details of the securities or shares held by him.

2. On receipt of the application and the statement the Political Officer may, after making such enquiries as he may deem necessary as to the total income of the applicant, issue a certificate of refund in Form C in the case of securities and in Form D in the case of shares, if he is satisfied that the applicant is liable to tax at less than 18 pies in the rupee.

3. If the applicant hands over the certificate of refund to the person empowered to pay the interest on the security, that person shall deduct from the interest due on such security only such sum as is the difference between the amount of tax chargeable at 18 pies in the rupee and the refund payable in accordance with the certificate of refund, and shall pay to the applicant the balance.

4. (1) If no certificate of refund is presented at the time the interest on the security of the Government of India is claimed, income-tax at 18 pies in the rupee shall be deducted from the interest due and the balance paid.

(2) If a claim for refund is made within one year from the end of the year to which the claim relates, the person empowered to pay the interest shall, on production of the certificate of refund, pay or authorise payment in case of such refund as may be due.

5. The Treasury Officer in charge of the Political treasury (or the prescribed treasury in British India if there is no British Indian treasury under the control of the Political Officer concerned) will pay the amount of refund on account of dividends if the certificate of refund granted by the Political Officer is presented to him. The claim for refund should be made within one year from the end of the year to which the claim relates.

FORM A.

Application for refund of Income-tax.

I
do hereby state that my income from all sources in British India during the year ending _____ on the 31st March 19____, amounted to Rs. _____ only as shown in the enclosed statement.

I therefore pray for a refund of _____ Rs. _____ under "Securities."

Signature

I hereby declare that what is stated herein is correct.

Signature

Dated

19 .

Notes.

1. The application should be accompanied by a return of total income in the form prescribed under section 22, unless the applicant has already made such a return to the Income-tax Officer.

2. The application for a refund should be made to the Political Officer in whose political charge the applicant ordinarily resides.

3. The application may be presented by the applicant in person or through a duly authorised agent or may be sent by post.

FORM B.

Statement showing the details of securities or shares.

Description of security.	Number.	Date.	Amount.

FORM C.

CERTIFICATE OF REFUND.

(For the year ending 31st March 19 .)

I, _____, Political Officer, do hereby certify that the income of _____ the owner of the securities specified below is liable to taxation at 18 pies in the rupee in respect of such securities but his income from all sources in British India including the interest on such securities being more than Rs. _____, and less than Rs. _____, he is entitled to a refund calculated at the rate of _____ pies in the rupee. The net amount of income-tax to be deducted on the interest is to be at the rate of _____ pies in the rupee.

Description of security.	Number.	Date.	Amount.

Dated this the _____ day of _____ 19 . _____ Political Officer.

FORM D.

CERTIFICATE OF REFUND.

(For the year ending 31st March 19 .)

I, _____, Political Officer, do hereby certify that the income of _____ the owner of the shares specified below from all sources in British India including the dividends on such shares being more than Rs. _____, and less than Rs. _____, he is entitled to a refund calculated at the rate of _____ pies in the rupee.

Description of shares.	Number.	Date.	Amount of dividend warrant.

Dated this the _____ day of _____ 19 . _____ Political Officer.

Paragraph 59.—Deductions at source of tax on dividends declared by Joint Stock Companies.—It often happens that the holders of shares in

Joint Stock Companies like the holders of securities authorise their bankers to collect dividends on their behalf. When they do so, it is the practice of the persons distributing the dividends to issue certificates under section 20 in the name of a bank for the whole block of shares held by the bank on behalf of its constituents so that it is not possible for an individual assessee for whom dividends are collected by his bankers to produce the certificate required by rule 14. The Income-tax Officer should ordinarily accept a certificate from a responsible officer of a bank in the following form and act upon it as if it were a certificate received direct from the person responsible for distributing dividends:—

We hereby certify that dividends on the various shares specified below were collected by us on behalf of and that we received payment or were credited with the proceeds thereof amounting to Rs. ₹ ₹ {

The dividends specified are covered by Certificates issued to the Bank under section 20 of the Income-tax Act 1922.

IMPERIAL BANK OF INDIA, DEPOSITORS' DEPARTMENT,
Calcutta 192 .

Superintendent.

Description of shares.	Holding.	Period.	Date of receipt of dividends.	Amount of dividends.

To be signed by Claimant.

I hereby declare that the shares on which dividends as above specified have been received are my own property, and were in the possession of the Imperial Bank of India, Calcutta, at the time when these dividends were realized.

Signature_____

Date_____

N.B.—The safe custody receipt and the Bank's pass book to be produced in support of any claim.

60. *Certificate by a company to shareholders receiving dividends.* (Section 20.)—The profits of a company are charged to income-tax at the maximum rate irrespective of what the amount of the profits may be (see Finance Act), and the shareholder of a company is, under section 48 (1) of the Act, entitled to claim a refund on proof to the Income-tax Officer that the maximum rate of income-tax is greater than the rate applicable to his "total income." In order to get such a refund, he must produce the certificate required by section 20 and prescribed in rule 14. Duplicates of certificates should be accepted if the claimant

satisfies the Income-tax Officer who has to sanction the refund that the dividends in respect of the tax on which the refund is claimed had actually been paid to the claimant, and if the Income-tax Officer has no reason to believe that a refund has already been granted in respect of the same dividends. As in the case of the certificate regarding tax deducted from interest on securities mentioned in paragraph 58, where a shareholder in a company is assessed to income-tax on account of income in his own hands, he may, instead of claiming a refund, ask that any rebate to which he is entitled should be set off against the tax which he is personally liable to pay, and the form of return of income for individuals prescribed in rule 19 permits of this set-off.

The form of the certificate prescribed in rule 14 differs from the form of the certificate prescribed in rule 13 for income-tax deducted from interest on securities in that it simply contains a statement that income-tax has been or will be duly paid by the company and that the dividends was declared on a certain date. It contains no statement as to the rate at which tax has been or will be levied or as to the amount of tax paid or to be paid. The reason for this is that in many cases it is impossible to state at what rate tax has been or will be levied on the particular profits out of which dividends are paid. The dividends of a company may be distributed from profits made during the course of a financial or commercial year before the rate of tax is known, or may be distributed from reserves maintained for the equalisation of dividends and composed of profits earned in previous years. It should, therefore, be assumed by Income-tax Officers in connection with these particular certificates that tax has been levied in respect of the dividends at the rate current on the date on which the dividends were *declared* since this is the rate to be taken into account in dealing with a claim for a refund under section 48 (1).

The form of certificate also provides for cases such as that of the tea companies which do not pay income-tax on their entire profits and gains distributed as dividends or that of a company such as indigo company the profits of which are altogether exempt from the payment of income-tax.

The amount of income-tax so assumed to be payable by the company in respect of the dividend declared has, under the provisions of section 16 (2), to be added to the net dividend received in calculating the total income of the individual shareholder.

The following instructions may with advantage be followed by persons granting certificates prescribed by section 20 of the Act:—

(1) The statutory form of certificate of deduction of income-tax prescribed by rule 14 of the Indian Income-tax Rules should invariably be used.

(2) Either (a) the certificate should be printed on the same sheet of paper as the actual warrant with a line of perforation to permit of its being detached, or (b) the dividend warrants should be machine numbered, while every certificate relating to a particular dividend should be given the same number as the corresponding warrant. There are cases in which Banks collect dividends on behalf of their constituents and companies send the banks consolidated dividend warrants in payment of all the dividends due in respect of the block of shares for which the bank is



acting, and at the same time send separate certificates for the shareholders by whom the shares are owned. In such a case if certificates are issued to a Bank for say twenty constituents, relating to dividend warrant No. 1, the certificates should be numbered by hand 1/1, 1/2, 1/3 to 1/20.

(3) The practice adopted by certain companies of either attaching red slips to the certificates drawing the attention of recipients to the need for their careful preservation for a year or two or of printing this caution in red ink on the face of the certificate may be generally followed.

(4) A note should be printed on the certificate to the effect that shareholders may claim refund of tax under section 48 (1) of the Act in respect of their dividends if their personal rate of tax is less than the maximum rate.

61. *Annual return of employés.* (Section 21).—Under section 21 read with rules 15, 16 and 17 a return in the form prescribed in rule 17 must be made of all employés deriving an income of Rs. 2,000 per annum or over, by the Government officers mentioned in rule 15, by every private employer and by, in the case of local authorities, companies or other public bodies or associations, the “principal officer” (see paragraph 6) “or the prescribed person.” The provision that in the last mentioned case the return is to be made either by the principal officer or “the prescribed person” is designed to avoid difficulties experienced particularly in the case of companies, owing to the provision of the Act of 1918 which required that the return should always be made by the “principal officer.” Where a company, for example, has got several places of business, it may be more convenient for the company that the returns under this section should be made not by the principal officer at the headquarters of the company but by officers at different branches, since this particular return has as a rule to be made to the local Income-tax Officer, i.e., to the Income-tax Officer of the place where the employés happen to reside. The liability for making this return remains under section 21 with the principal officer unless another person is prescribed in the case of particular companies. Such a person must be prescribed by means of a rule made by the Central Board of Revenue [see section 2 (10) and section 59 (2) (e)]. The object of the return is to enable Income-tax Officers to see that the tax has been deducted at the source under section 18 (2), to arrange for adjustments where the collections at the source have not been made correctly and to assess “salaried” persons under section 23, whether the tax has been collected at the source or not, where the salaried persons have other income than “salary.”

This section prescribes that the return must be delivered to the Income-tax Officer but does not state to what particular Income-tax Officer the return should be made. Every Income-tax Officer has, under the provisions of section 64 (4), all powers conferred by or under the Act on an Income-tax Officer in respect of any income accruing or arising or received within the area for which he is appointed, irrespective of whether the particular income is assessed by him or not. In most cases it is convenient that this return should be made to the Income-tax Officer of the area in which the employés reside, but in some cases it may be more convenient that the return should be made to the Income-tax Officer of the area in which the headquarters of a wide spread business is situated.

It is for the Income-tax Commissioner in each doubtful case to decide to what particular Income-tax Officer this return should be sent.

The return prescribed under this section is the return of all employés who during the period of 12 months ending 31st March last were in receipt of salary of not less than the prescribed amount of Rs. 2,000, and the return must be furnished to the Income-tax Officer in the proper form before the 1st of May. The obligation to make this return is a statutory one and no preliminary notice or request from the Income-tax Officer is required. Failure to furnish this return is punishable under section 51 (c) of the Act.

62. *Return of income by companies.* [Section 22 (1).]—The return of the total income of a company must be furnished to the Income-tax Officer before the 15th day of June in each year in the form prescribed in rule 18, which also contains the form of the verification of such return. The obligation to make this return is a statutory obligation upon the “principal officer” (see paragraph 6) of the company, and it is not necessary that the Income-tax Officer should send any preliminary notice or request to the company or the principal officer concerned. Failure to furnish this return is punishable under section 51 (c) of the Act.

63. *Return of income by persons other than companies.* [Section 22 (2).]—The form of return of total income of individuals, firms or Hindu undivided families is prescribed in rule 19 which also prescribes the form of the verification of such return. In this case no statutory obligation rests upon the individual, firm or Hindu undivided family to make such a return until a notice has first been served by the Income-tax Officer requiring such a return. The notice must allow a period of 30 days for the furnishing of the return. If, however, on receipt of such notice, the return is not furnished within due time, such failure to make a return is punishable under section 51 (c) of the Act.

64. *Consequences of failure to furnish a return of income.*—Where a return is not furnished in due time, whether it be a statutory return which companies are required to furnish by the 15th of June under section 22 (1), or whether it be the return which other persons are required to furnish under section 22 (2) on receipt of a notice from the Income-tax Officer calling upon them to do so, the person failing to make the return is not only liable to be prosecuted under section 51 (c) but no appeal lies under the proviso to section 30 (1) of the Act against any assessment made by the Income-tax Officer upon the company or other person failing to make a return.

Failure to make a return, therefore, deprives the person at fault of any remedy whatsoever against the assessment subsequently made, except the remedy specified in section 27. Under that section a person failing to make a return may within one month after the receipt of a notice of demand of the tax apply to the Income-tax Officer, and if he satisfies him that he was prevented by sufficient cause from making the return, the Income-tax Officer shall cancel the assessment and proceed with the case *de novo*. Should the Income-tax Officer refuse to re-open the case under section 27, the assessee may appeal under section 30 to the Assistant Commissioner, but if the Income-tax Officer does re-open the case, whether of his own accord on an application under section 27 or under the

orders of the Assistant Commissioner under section 31 on an appeal, and the assessee fails again to make a return, the same provisions apply and no appeal lies against the assessment. Section 22 (2) makes it *obligatory* upon the Income-tax Officer to call for returns from all assesseees, and as the success of the administration of the Act is largely dependant upon assesseees making returns of their income, every effort should be made to get every assessee to file a return. At the same time it is desirable that, with due regard to the fiscal interests of the Government, all income-tax officials should administer the Act in a sympathetic spirit, and in particular should give assistance to assesseees if they find any difficulty in filling up their returns.

Sub-section (3) of section 22 is a new provision the effect of which is that where a person has not furnished a return in due time or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or a revised return before the order of assessment is passed so that where such a return or revised return has been made the assessee may not be prosecuted for failing to submit a return in due time under section 51 (c) and may not be penalised under section 28 for making a wrong statement in the original return.

65. *Consequence of false returns.*—A person who makes a false return under section 22 is liable to be punished under the provisions of section 177 or section 182 of the Indian Penal Code which run as follows:—

‘177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. * * *’

“182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person

shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.”

The returns under section 22 must be “verified in the prescribed manner” and under section 52 of the Act a false statement in any such verification is an offence punishable under section 177 of the Indian Penal Code.

Apart from these legal penalties, under section 28 of the Act if the Income-tax Officer, the Assistant Commissioner or the Commissioner is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income and has thereby returned it below the real amount, he may direct that the assessee shall pay a penalty not exceeding the amount of the tax which would have been avoided if the return had been accepted as correct. The second proviso to section 28 (1), however, provides that where a penal assessment under that section is imposed by the revenue authorities, no criminal prosecution for an offence shall be instituted on the same facts. It is obviously not desirable that there should be room for a possible con-

flit between the revenue and judicial authorities, and it is also unreasonable that a double punishment should be provided for.

A criminal prosecution cannot, under section 53 (1) of the Act, be instituted except at the instance of an Assistant Commissioner. In most cases action under section 28 will be effective although in more serious cases a prosecution might be launched.

66. *Production of accounts.* [Section 22 (4).]—Under sub-section (4) of section 22 the Income-tax Officer is empowered to call upon any person liable to make a return to produce such accounts or documents as he may require. The production of accounts may be called for whether a return has or has not been made. As stated in paragraph 64, it is always desirable in the interests both of the assessee and of the Government that Income-tax Officers should obtain a return of income before they make an assessment. If, however, such returns are not forthcoming, they should, so far as possible, obtain the accounts of the assessee. Again, if a return is made the Income-tax Officer has power to call for accounts wherever he considers it necessary for the purpose of testing the accuracy of the return. It is, however, desirable that the least possible inconvenience should be given to assessee by the detention of their accounts by Income-tax Officers, and Income-tax Commissioners should take steps to see that accounts are not detained for any undue time or for any unnecessary purpose. Steps should be taken to secure that the services of competent and reliable Accountants where employed by assessee should be utilised to the fullest extent by the Income-tax Officers. The latter from their experience should soon know what particular Auditors can be relied upon to give accurate figures. Where a statement of profit and loss filed by an assessee has been certified as correct and complete by such an Accountant, the Income-tax Officers should, unless he sees reason to the contrary, accept the statement as correct and complete with regard to the facts mentioned in it, although he will frequently have to call for details showing how various figures are made up. But in such cases the Accountant himself when authorised by the assessee to appear on his behalf should be asked to supply the details. Income-tax Commissioners should take steps to secure that the services of such Accountants are fully availed of.

The proviso to sub-section (4) of section 22 prevents any Income-tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the "accounting period." This limitation applies merely to books of account; it does not apply to documents. No limitation is placed by the Act upon the power of the Income-tax Officer to call for documents of any date.

Neglect to furnish accounts or documents asked for by the Income-tax Officer under section 22 (4) is punishable under section 51 (d) and, further, under the provisions of section 23 (4) read with section 30 (1), any person who fails to comply with the requisition of the Income-tax Officer for the production of accounts or documents may not appeal under section 30 against the assessment made whether he has made a return or not. He is in exactly the same position as a person who did not make a return in the first instance, his only remedy being that described in paragraph 64 (i.e., under section 27).

67. *Evidence in assessment proceedings other than returns and accounts of assessee.*—In addition to his general power to call for accounts, the Income-tax Officer where he believes that a return made under section 22 (2) is incorrect or incomplete, has power to call upon an assessee to attend or to produce or cause to be produced evidence of the correctness of his return. If an assessee fails when required by an order under section 23 (2) to attend or to produce evidence in support of his return, he is not liable to any penalty under section 51, but failure to comply with such orders has the result of placing the assessee in exactly the same position as a person who failed originally to make a return [see section 23 (4)], that is, he may not appeal against the order of assessment or take any action other than action under section 27 as described in paragraph 64.

Under section 23 (3), the Income-tax Officer is empowered to utilise any evidence bearing on the assessment which he may obtain of his own motion, while under sections 37 and 38, he can enforce the attendance of any person for this purpose and compel the production of the information that he requires.

The following special instructions should be observed in calling for information from railway administrations:—

- (i) The information must be relevant to an individual assessment. Income-tax Officers should not, for instance, ask for a complete statement of all consignments to or from a particular station.
- (ii) The demand for information must be couched in definite terms. For instance it must state whether the particulars are required with regard to outgoing or incoming consignments and name the stations with regard to which the information should be collected.
- (iii) The requisition for information should always be sent to the Agent of the Railway administration concerned.

Section 37 gives power to call for railway books.

A company should not be required to furnish the Income-tax Officer with a return of the persons (with their addresses) for the time being appearing on the share register of the company and the amounts of the dividends paid or payable to such persons during any particular period. Such a duty would be burdensome to the company with no corresponding advantage to the administration. It is for this reason that in section 39 of the Act provision is made that the share register, the register of debenture holders and of mortgagees of any company are open to the inspection of the income-tax authorities, who may also take copies or cause copies to be taken of any entries in such registers. Since the power to inspect, and take copies of such register is specifically conferred by section 39, no income-tax authorities utilising these special powers can be called upon to pay any fee for inspection or copies under the Companies Act.

The Bill as originally framed contained a provision empowering an Income-tax Officer to require information to be given regarding specific payments shown in the accounts of an assessee where there is reason to believe that such payments will become liable to tax in the hands of the recipients. This particular provision was omitted by the Select Com-

mittee on the Bill as being entirely unnecessary because Income-tax Officers have ample powers to disallow any payment shown in the accounts of an assessee where proof of the payment is not forthcoming.

Section 37 also provides for the issue of commissions. The scale of diet money and travelling expenses for witnesses summoned under this section should be that prescribed for attendance in civil courts in the Province concerned.

68. *Personal attendance of assessee.*—While section 23 (2) empowers the Income-tax Officer to require a person making a return to attend at his office, under the provisions of section 61 any person required or entitled to attend before any income-tax authority may either attend in person or be represented by a person duly authorised by him in writing. The penalty to which an assessee who failed to attend when required to do so by an Income-tax Officer was liable under the Act of 1918, has been omitted from section 51 of the present Act. While there is no obligation on an assessee to attend in person at any stage of the assessment proceedings or before any income-tax authority in connection with any proceedings under the Act, and while he may be represented at any such proceedings by any person he pleases to authorise in writing, failure to attend or to be so represented has the result that the assessee loses any right of appeal against the assessment.

It should, however, be particularly noted that the provisions of section 61 merely refer to attendance. Returns and verifications required under the Act must be signed by the assessee himself, and section 61 does not apply to such cases.

It is desirable that tax-payers should be allowed to use whatever agency they please for the purpose of representing their case; and whatever person they authorise to represent them whether he be an employé, an accountant or any other person, has presumably been selected by them as the person having the best knowledge of their accounts and financial position, and such person is entitled to appear before any income-tax authority and to give explanations and produce evidence regarding any points of doubt that may arise.

69. *Set-off of loss under one head of income against income under another head.*—Under the Act of 1918 it was the aggregate amount chargeable under each of the separate heads mentioned in sections 7 to 12 of the Act that determined the total and taxable income of an assessee, so that when a person carried on a trade or profession and also had an income from house-property, if he had actually incurred a loss from the trade or profession, the figure adopted under that head in arriving at the aggregate amount of the income chargeable to tax was *nil* and not a *minus* sum. Under the provisions of section 24 of the Act a loss under one head of income may now be charged against profits under another in the same year.

Sub-section (2) of section 24 only applies specifically to the case of a registered firm but the Madras High Court has held that under the provisions of section 24 (1) a partner in an unregistered firm is entitled to set-off his share of the net loss incurred by the firm in the same circumstances and to exactly the same extent as a partner in a registered firm. It has been decided to accept that decision. The result is as follows. A firm owning property or having income from a business and being in receipt of interest on securities would, under the provisions of

sub-section (1), be entitled to set-off a loss from the business against its income chargeable in respect of interest on securities under section 8 or property under section 9. But it might happen that a firm might incur a net loss, in which case it would not be liable to tax. Sub-section (2) specifically provides for such a case.

Illustration.—A firm has property the annual value of which is Rs. 2,000, has income from interest on securities amounting to Rs. 1,000 and carries on a business from which it incurs in one year a loss of Rs. 10,000. The firm is entitled under the provisions of sub-section (1) of section 24 to set off the loss from business against the annual value of the property and the interest on securities, and its total income would be *minus* Rs. 7,000. A who is a partner in the firm having a share of one-half in the profits thereof, has other personal income of Rs. 6,000 from interest on securities. He is entitled under the provisions of sub-section (2) to set off his share of the net loss from the firm (*viz.*, Rs. 3,500) against this personal income and would be assessed on a total income of Rs. 2,500.

Where an individual is a partner in two separate firms of which one is registered and the other unregistered and has no separate personal income, he should be allowed, in dealing with any application for refund under section 48, to set off his share of any net loss incurred by the unregistered firm against his share of the profits of the registered firm. For example, 'A' having a half share in an unregistered firm, which incurred a net loss of Rs. 2,000 in one year, had in the same year no personal income liable to assessment to income-tax in his own hands, but had a similar share in another registered firm which had made a net profit of Rs. 10,000. Such cases will be rare and should be dealt with on the basis of real income, *i.e.*, in the case above quoted 'A' should get a refund so adjusted that he shall suffer finally tax of 5 pies in the rupee on his real income of Rs. 5,000 *minus* Rs. 1,000, *i.e.*, Rs. 4,000. The same principle would apply if both firms were registered. Where the situation is reversed that is where the registered firm makes a loss and the unregistered firm a profit obviously no relief can be given. Nor can an unregistered firm claim to set off losses of the individual partners against the income of the firm. But a partner in a registered firm should be allowed to set off loss incurred in his individual capacity against his income as partner in dealing with any application under section 48.

Similarly if 'A' has a loss of Rs. 1,000 in business, an income of Rs. 1,000 from interest on securities and an income of Rs. 3,000 from dividends, he should be allowed to set off his loss of Rs. 1,000 against his income of Rs. 4,000 and should be taxed on the balance of Rs. 3,000.

In the same way, if A borrows money to buy securities or shares and the interest on the loan exceeds the interest or dividend that he receives, he is entitled to set off the excess of the interest paid over the interest or dividend received against any other taxable income. (See P. 26.)

From the point of view of equity it is obviously reasonable to allow a set-off in these cases; from the legal point of view it is incorrect to argue that section 24 (1) is inapplicable to such cases on the ground that income from dividends or income derived from a firm is not (from the point of view of the shareholder or partner) income falling under any

of the heads mentioned in section 6—Section 24 (1). Obviously such income must fall under one of these heads, otherwise (a) it could not be included in the total income of the shareholder or partner; but it is so included—section 16; and (b) the shareholder or partner could in no circumstances be assessed individually on such income, but under section 14 (2) he is assessable on such income if it so happens that the company or firm has not been assessed. Consequently such income from dividends or from a firm must fall under one of the heads in section 6. Income from dividends should evidently be regarded in the hands of the shareholder as income from “Other sources,” while income from a firm should be regarded in the hands of the partner as income from “Business.” On the other hand the partner or shareholder is not an “assessee” in respect of such income unless the firm or company has not been assessed.

70. *New business.*—As stated in paragraph 13, assessments under the Act are made on the profits of the “previous year.” When a new business is started, therefore, no assessment will, as a rule, be made in the first year, and the assessment in the second year will be made on the profits of the preceding year. The only exception is that referred to in the next paragraph.

71. *Businesses closing down.*—The only exception to the general rule that assessments are made on the profits of the previous year is contained in section 25 (1) where, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses, professions or vocations that close down during the course of a financial or commercial year, it is provided that in such cases in addition to the assessment on the income of the preceding year a further assessment may be made in the year in which a business, profession or vocation is closed down, on the income of that year. Sub-section (2) of that section imposes a statutory obligation on persons discontinuing a business, profession or vocation to give notice of such discontinuance within 15 days of the discontinuance.

It is to be noted that these provisions apply only to businesses, professions or vocations, that is to say, to profits or gains taxable under sections 10 and 11, and further, that they only apply to any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918. They do not apply to any business, profession or vocation on which income-tax had been charged under the provisions of that Act, as these are subject to the special provisions of section 25 (3) which are described below.

The power to make this additional assessment under section 25 (1) is a *discretionary* power which may be exercised whether the business, etc., is a purely temporary business commencing and closing down in the same year, or whether it is a business that has been in existence and has been previously taxed under the present Act. It should only be used in cases where there is reason to anticipate that the tax may not be collected unless the assessment is made in the year in which the business, etc., closes down. Where there is reason to believe that there will be no difficulty in making the assessment and collecting the tax in the usual manner, that is, in the year after the business closes down and on the profits of the year in which it did close down, there is no need to use the special powers conferred by this sub-section.

The profits to be taxed under the provisions of sections 25 (1) are the profits accruing between the end of the last "previous year" of which the profits have been taxed and the date of the discontinuance of the business. Further, the rate to be applied in taxing the discontinued business under sub-section (1) is the rate in force in the year in which the assessment is made.

Where a business, profession or vocation had tax charged on it under the provisions of the Income-tax Act of 1918, the provisions of sub-section (1) to section 25 cannot be brought into use for the assessment of any such business. On the contrary for reasons given in para. 13, it is, under the provisions of sub-section (3) of section 25, not liable to tax in respect of profits or gains for the period between the end of the last "previous year" and the date of discontinuance, but is entitled to substitute the profits of that period for the profits of the last "previous year." For example, in the case of a business whose "previous year" ends on 31st March, if it close down on March 31st, 1923, its assessment for 1922-23 will be on the profits for the year ending 31st March 1922, or at its option, on the profits of its year ending 31st March 1923. If such a concern closed down on 30th April, 1922, it would still be assessed in the year in which it closed down, but the assessment would be on the year's profits to 31st March 1922, or at its option on the profits of the month of April 1922. If, however, the concern's "business year" ends on 30th April and it closes down on 30th September 1922, its assessment in the year 1922-23 would be on the profits of its year to 30th April 1921 or at its option on its profits from 1st May 1921 to 30th September 1922. This special provision applies only to a business, profession or vocation on which tax was charged under the Act of 1918, and when a claim for this concession is made, it must be supported by proof that tax had been charged under the Act of 1918 in respect of that very business, profession or vocation.

N.B.—The provisions of section 25 apply to the complete stoppage or discontinuance of a business, profession or vocation and do not apply to any change in the proprietorship. Where there is any change in the proprietorship merely, the provisions of section 26 apply (see paragraph 72).

Where a business, profession or vocation is completely discontinued and is not merely transferred from one proprietor or set of proprietors to another, the person who carried on the discontinued business is responsible for the payment of the tax, and where the proprietorship was vested in a firm, section 44 specifically provides that the persons who were members of the firm on the date of such discontinuance, are jointly and severally liable to any tax due from the firm.

*72. Change in the ownership of a business, profession, or vocation.—*Difficulties were experienced under the previous Acts regarding the distribution of the tax in cases where there has been a change in the proprietorship of a business, profession or vocation. Under the provisions of section 26 the liability for the tax based on the income of the "previous year" attaches in such cases to the business, profession or vocation itself, and the new owners are liable for the tax even though they were not owners for the whole of the time during which the profits on which the assessment is based, were earned. This applies whether the business, profession or vocation is owned by a single individual or by partners or by

a company (the word " person " includes a company under the provisions of section 3 (39) of the General Clauses Act). If an individual therefore has succeeded by purchase or otherwise to another individual in the ownership of a business, etc., he is, under the provisions of this section, deemed both for the purposes of income-tax and super-tax to have received the profits on which the assessment is based. The same remarks apply to cases where a company buys up another company or purchases a concern from a firm or an individual or where there is a change in the constitution of a firm. For example, if A happens to be a member of a firm when an assessment is made in the year 1922-23, even if A has newly succeeded to the partnership just before the assessment is made, he is deemed both for the purposes of income-tax and super-tax to have received out of the profits of the year 1921-22 (which are the profits assessable in the year 1922-23) the share to which he would have been entitled had his share in the registered firm been the same as it was in 1922-23 when the assessment was made.

73. *Orders of assessment.*—When an assessment order has been passed under section 23, any assessee who applies to the Income-tax Officer for a copy of the order must be supplied by the Income-tax Officer with a copy free of charge.

74. *Notice of demand.*—The notice of demand referred to in section 29 and prescribed in rule 20 draws a clear distinction between the cases where an appeal lies against an assessment and where an appeal does not lie, and shows the appropriate remedy to an aggrieved assessee in either case. These notices of demand should, so far as possible, contain the demand both on account of income-tax and super-tax, and since the total income has to be ascertained in every assessment for income-tax in order to determine the rate at which income-tax shall be payable on any income for which the assessee is responsible for direct payment, and as it is on the same total income that super-tax is leviable, it is desirable that, so far as possible, in the interests of economy and convenience to assesseees, the assessment both of income-tax and super-tax should be made simultaneously.

75. *Appeals to Assistant Commissioner.*—The cases in which an appeal may lie to an Assistant Commissioner against the orders of an Income-tax Officer are specified in detail in section 30. As stated in paragraph 64, it is necessary that every effort should be made to get taxpayers to file returns of income and the restrictions on appeals contained in the proviso to section 30 (1), which definitely forbid the entertainment of any appeal against an assessment where the Income-tax Officer has been compelled to make the assessment under section 23 (4) [*i.e.*, in cases where an assessee has failed to make a return or has failed to produce his accounts when called for or has failed to produce any proof of the accuracy of his returns], should be rigidly adhered to. Under no circumstances may any appeal be entertained in those cases.

Section 30 now allows appeals to the Assistant Commissioner against the refusal of an Income-tax Officer to re-open a case under section 27 and also against the orders of an Income-tax Officer imposing a penalty under section 25 (2) or section 28.

The form in which an appeal must be presented to the Assistant Commissioner is specified in rule 21 and that form must also be verified in

the method prescribed in the same rule. Any false statement in the said verification is punishable under section 52.

76. *Powers of Assistant Commissioner in dealing with appeals.* (Section 31.)—The provisions of this section have been re-worded in order to make it clear that the Assistant Commissioner in entertaining an appeal has power to remand a case to the Income-tax Officer for report or disposal on its merits and also that the Assistant Commissioner is not required to pass orders on the actual date of hearing, but may pass orders after the last day of hearing.

An Assistant Commissioner in dealing with an appeal may enhance the assessment made by the Income-tax Officer, but under the proviso to sub-section (3) he must first give the appellant a reasonable opportunity of showing cause against the enhancement. The appellant in such a case may under section 32, appeal to the Commissioner against the order of enhancement.

77. *Appeals to Commissioner.*—No second appeal lies from orders passed by an Income-tax Officer. One appeal is allowed to the Assistant Commissioner under section 31. The only cases in which an appeal may be made to the Commissioner are against special orders passed by an Assistant Commissioner himself, *viz.*, an order imposing a penalty under section 28 or an order enhancing an assessment in the course of an appeal. No appeal lies to the Commissioner in any other case.

78. *Power of review.*—Under section 33 the Commissioner has power to review any proceedings whatsoever taken by subordinate officers. Under the Act of 1918 his powers were limited to assessment proceedings but he may now review any proceedings including orders imposing penalties and orders in connection with refunds or recovery of demands. No restriction has been placed by the Act upon the power of the Commissioner to review the proceedings of subordinate authorities. Sections 34, 35, and 50 definitely restrict the period within which subordinate authorities may themselves re-open cases. It seems desirable that a similar limitation should, in practice, be observed by Commissioners of Income-tax in exercise of their powers under section 33. Income-tax Commissioners should, therefore, not exercise their powers of review in any case where more than a year has elapsed since the passing of the last order by the subordinate authority.

The Commissioner in exercise of his powers of review need not necessarily in each case make a personal enquiry but may cause an enquiry to be made by a subordinate officer.

The power conferred by this section on a Commissioner can only be exercised once in any particular case. A Commissioner who has once passed an order in connection with any case under section 33 cannot review that order even if he subsequently finds that he has made a mistake in passing such order.

79. *Assessment of income which has escaped assessment in previous years.*—Under the provisions of section 34 where income chargeable to income-tax has escaped assessment in any year or has been assessed at too low a rate, the Income-tax Officer may commence proceedings at any time within one year from the end of the year in which the income so escaped assessment in order to get a full or proper assessment. All that

section 34 requires the Income-tax Officers to do within the statutory period of one year is to *commence* proceedings for assessment. It is not necessary that the proceedings should be completed within that period.

When income that escaped assessment or was assessed at too low a rate is subsequently assessed or fully assessed, the proviso to section 34 makes it clear that the rate applicable to such assessment or re-assessment is the rate in force at the time when the income should originally have been so assessed.

80. *Rectification of mistakes in assessments.*—The power conferred upon an Income-tax Officer by section 35 to rectify a mistake, whether on his own motion or on the application of an assessee, is confined to the rectification of mistakes patent from the facts or documents which were before the Income-tax Officer when he passed the original assessment order. This section does not confer on the Income-tax Officer a general power of review or authorise any assessee to introduce any new facts in connection with the said assessment. An Income-tax Officer should not correct mistakes in cases that have been dealt with by the Assistant Commissioner on appeal or the Commissioner of Income-tax in review without a reference to the Assistant Commissioner or the Commissioner of Income-tax as the case may be. If the Assistant Commissioner or Commissioner of Income-tax becomes aware of any such mistake in a case dealt with on appeal or in review he should direct the Income-tax Officer to rectify it.

81. *Elimination of pies from assessment.*—Section 36 provides that in income-tax assessments or refunds fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna. This provision has been made for the purpose of eliminating fractions of an anna from the accounts.

Income-tax Officers should also be instructed not to attempt to work out the Income-tax due on fractions of a rupee. Fractions of a rupee in *income* should be entirely disregarded.

82. *Fiduciaries.*—In the case of trusts the Act does not permit of any double taxation, *viz.*, once in the hands of a trustee and once in the hands of a beneficiary. Sections 40 and 41 of the Act which provide for the trustee in particular cases being liable for the tax in place of the beneficiary make it perfectly clear that it is only in cases covered by these sections that a trustee can be required to pay the tax.

83. *Non-residents. Income other than from business.*—Under section 4 (1) tax is payable in respect of all income, profits or gains accruing or arising in British India or deemed under the provisions of the Act to accrue or arise or to be received in British India, whether the recipient resides in British India or not. There is little difficulty regarding income arising in British India and receivable by non-residents under the heads "salaries," "interest on securities," "property," "professional earnings," or "other sources." In cases of income from "interest on securities" and "salaries" income-tax is deducted at the source, and in the case of income under the other heads a non-resident is usually represented by an agent [section 42 (1)]. No difficulty has been experienced in determining whether income under any of those heads is taxable.



84. *Non-residents. Income arising from business in India.*—There is no precise definition in the Act which can be used as a test for determining in every particular instance whether a non-resident is or is not carrying on business in British India and how the amount of taxable profits is to be arrived at. Section 42 of the Act contains special provisions regarding non-residents, and rules 33 to 35 prescribe the manner in which and the procedure by which the income, profits and gains may be arrived at in the case of non-residents. Instances are given below of the method to be adopted in dealing with typical cases:

(1) *Indian branches of non-resident firms* are liable to assessment under the Act. In order to secure an accurate assessment in such cases, sections 22 (4) and 37 enable an Income-tax Officer to require the production of the balance sheet and profit and loss account of the firm as a whole in addition to that of the Indian branch, and also to require the submission of a detailed statement of all the profits credited to the personal account of the head office on account of transactions carried out on its behalf. In some instances, however, the form adopted for the accounts and balance sheets of the head office or the Indian branch does not enable the share of profits properly due to the Indian branch to be accurately gauged, while there are certain firms which keep no accounts at all either at their head office abroad or at their branch offices in India. Rule 33 gives Income-tax Officers wide powers to determine how the profits of the Indian branch shall in these circumstances be calculated and enables them to fix as the income of the Indian branch for assessment purposes either a percentage of the turnover of the business done by the branch or, where this procedure proves unsuitable, an amount which bears the same proportion to the total profits of the business as the Indian receipts bear to the total receipts of the business, or, where neither of the above methods proves suitable, any other more reliable method of calculation. In the case of shipping companies in particular the most suitable method of assessing the Indian branch is usually to calculate tax on the same proportion of the total profits of the company as the Indian receipts of the company (meaning thereby the sums received either in India or elsewhere on account of goods shipped or passengers carried from India) bear to its total receipts. In the special case of the Indian branches of non-resident insurance companies (life, marine, fire, accident, burglary, fidelity guarantee, etc.), it will probably be found both feasible and equitable to adopt the provisions of rule 35 and assess these branches on the proportion of the total profits of the companies corresponding to the proportion which their Indian premium income bears to their total premium income.

(2) *Indian firms allied to non-resident firms of which they are not technically either branches or agencies* often succeeded in the past in escaping their proper taxation by a manipulation of accounts with the parent non-resident companies. To cite an example, a foreign firm dealing in aniline dyes was registered as a separate limited liability company in India with a capital of Rs. 20,000. The shares were never placed on the market in India, but, with the exception of small holdings by managers in India, were all held abroad. The registered capital was nominal in comparison with the value of the stock-in-trade and the parent company abroad sold to the subsidiary Indian company at a price

leaving a margin just sufficient to cover the expenses of the subsidiary company, or causing an actual loss to be shown. Section 42 (2) of the Act is designed to prevent a subsidiary Indian firm or company from benefitting by such a manipulation, and enables an Income-tax Officer to assess it on the profits which may reasonably be deemed to have been derived from its Indian business, while, where any difficulty is experienced in arriving at a basis for assessment, assessment on a percentage of turnover, or other suitable method can be adopted under rule 34. It is to be noted that the provisions of section 42 (2) are not applicable where the parent non-resident firm or company is constituted within the British Empire and that the liability to assessment is placed on the subsidiary Indian firm as a principal and not as an agent.

(3) *Indian agents of non-resident firms of which they are not technically either branches or subsidiary firms* are liable for the payment, on account of their principals, of the tax on their principals' Indian profits under the provisions of sections 42 (1) and 43 of the Act. It will be observed that these provisions permit the levy of the tax on a non-resident's business not only where he has established a regular *agency* in India but also where he conducts his business regularly through a particular *agent* or casually through various *agents*. In this case it is not necessary that anything of the nature of a regular *agency* should exist in order to make the profits of a non-resident chargeable in the name of an agent. They are so chargeable even when the only connection between the non-resident and the person acting as his agent is that that person is ordinarily and regularly employed as an agent by the non-resident. The Government of India do not, however, desire that in practice the liability to assessment should be enforced except where something definitely of the nature of an agency exists and in particular no attempt should be made to tax the profits of a *consignment business pure and simple*, merely because the non-resident consignor habitually uses a particular resident as his agent.

In all cases it will be a question of fact whether the connection between the non-resident and the resident is such that an agency can be held to exist. It is doubtful whether it is practicable to formulate for the guidance of Income-tax Officers any more definite principles than those stated above; but the following examples may serve to indicate the lines on which decisions should be reached:—

(a) B, a distiller in Glasgow, has agreed to sell to no one in India except A, his agent, provided that A gives B all or an agreed proportion of his trade. A purchases from B and sells to the trade at his own rates, and all bad debts are A's. No attempt should be made to tax B on his profits. His position, in spite of his supplementary agreement with A, is merely that of a seller to an Indian consignee who takes the risks or profits of the trade in India.

(b) A, an Indian resident and a large supplier of mill stores, has a monopoly for the sale in India of the belting of a non-resident B. A is paid commission by B on all orders he sends either for his own stock or risk or in execution of orders obtained. He does not confine his purchases of belting to B. He stands all loss from bad debts and fixes the

prices to be asked for the goods. Here again the position of B is merely that of a seller to an Indian consignee, and no attempt should be made to tax B's profits.

- (c) A is the Indian agent for hardware and sundries of B, a British manufacturer. A receives salary and commission from B and bad debts fall on B. Here there is a regular agency and B's Indian profits should be taxed through A.
- (d) A is the Indian agent for B, a firm in an Indian State, who consigns goods for sale in Bombay or China through A. The business is purely a consignment business and B's profits on his Indian trade should not be taxed.

In all these cases A's remuneration or profits as agent are liable to the tax.

(4) *Casual agents for non-resident firms to whom goods are from time to time consigned* have been dealt with in (3) above and no attempt should be made to tax the profits of a non-resident through the agent on this class of business.

Attention is invited to the ruling of the Madras High Court (Case No. 5 in Volume II) in which it has been held that a person who is not a resident in British India but to whom income arises or accrues through business connections in British India is assessable to income-tax under sections 4 and 42 (1) of the Act whether he is a British subject or a foreigner and that the provision in the latter section that such income shall be taxable in the name of the agent of any such person does not mean that it is not chargeable unless assessed in the name of an agent. The non-resident can himself be assessed under section 42 (1) if he happens to come into British India. All that the latter part of the sub-section does is to provide machinery by which the tax can be levied when the non-resident himself cannot be got at.

See also paragraph 87 as to the time within which arrears of tax due from a non-resident may be recovered.

85. When assessing British Shipping Companies, the Income-tax Officers should accept a certificate granted by the Chief Inspector of Taxes in the United Kingdom stating (1) the ratio of the profits of any accounting period as computed for the purposes of the United Kingdom income-tax to the gross earnings of the Company's whole fleet or (2) the fact that there were no such profits. The expression 'gross earnings of the Company's whole fleet' means the total receipts of the Shipping Company, excepting only receipts from non-trading sources, such as income from investments. The following instructions should be observed where British Shipping Companies correspond direct with Income-tax Officers and not through an Agent in British India:—

1. Where a British Shipping Company which corresponds direct with an Income-tax Officer, is unable to furnish its return of income by the prescribed date, it will obtain an extension of time from the Income-tax Officer; but every effort should be made to file the return as early as possible.
2. The Income-tax Officer will make the assessment as soon as possible after receiving the return and in any case within one month.

the assessment is made under section 23 or when intimation is received of orders of enhancement from superior authorities in order that the tax may be promptly collected. The fact that an appeal has been lodged against an assessment should not stop the collection although the Income-tax Officer is empowered, under section 45, in his discretion to treat an assessee as not being in default until an appeal is disposed of. When the Income-tax Officer considers that an appeal is a *bonâ fide* appeal, he should in exercise of his discretion under section 45 require the assessee to pay the portion of the tax that is not in dispute and should, under no circumstances, delay the collection of that portion of the tax which is not disputed in the appeal. Similarly section 66 (7) of the Act provides that a reference to the High Court shall in no way stop the collection of the tax.

When the tax is not paid within the time prescribed in the notice, or, if no such time is prescribed, by the first day of the second month following the date of the *service* of the notice or order, the Income-tax Officer should use the powers conferred upon him by section 46 (1) and impose a penalty for the default.

Section 46 (3) and (4) provides for cases where a special whole-time income-tax staff for the actual collection of the tax is employed in any area. Where such a staff is employed, the Commissioner of Income-tax may confer upon that staff any of the powers for the enforcement of any process for the recovery of a municipal tax or local rate imposed under any enactment which is in force in any part of the province, *e.g.*, the powers of distraint. In other areas and, in the areas in which a special staff is employed where the powers for the recovery of municipal taxes or local rates have proved insufficient, the Income-tax Officer may, under section 46 (2), forward under his signature a certificate specifying the amount of arrears due from an assessee to the Collector of the district, and the Collector of the district on receipt of such a certificate must proceed to recover the amount specified in the certificate as if it were an arrear of land revenue.

Where the defaulter is a salaried person the Income-tax Officer may, under the provisions of section 46 (5), require the person paying "salary" to such assessee to deduct from any subsequent payments of "salary" any arrears of tax due from such assessee whether those arrears are due on account of tax on 'salary' or on income from any other sources or on account of any penalty.

The necessity for prompt collection of the tax should be impressed upon Income-tax Officers since not only is delay in the collection of this tax likely to result in loss of revenue for other reasons, but, under the provisions of section 46 (7), no proceedings for recovery can be commenced after the expiration of one year from the last day of the year in which the demand is made, with the exception of the special case referred to in sub-section (1) of section 42. That sub-section refers specially to arrears of tax due from a non-resident. For the collection of such arrears no time limit is prescribed as such arrears may be recovered from any assets of the non-resident which may *at any time* come within British India.

The phrase "proceedings for the recovery of any sum payable under this Act" should be interpreted as relating to proceedings taken under

section 46. The issue of a notice of demand is not a proceeding for the purpose of this section.

The above remarks regarding recovery of tax apply also, under the provisions of section 47 to the recovery of any penalty imposed under section 25 (2), section 28 or section 46 (1).

88. *Refunds of Income-tax.* (Section 48.)—Refunds are necessitated owing to the system of taxation at the source, which occurs in the case of the tax on companies and on registered firms (section 48 (1) and (2)), and of deduction at the source, which occurs in the case of " interest on securities " and " salaries " (section 48 (3)). In both these cases the rate of tax appropriate to the " total income " of the recipient (the shareholder, partner, security-holder or salaried person) is not known at the time that the tax is assessed or deducted. As stated in paragraph 58, in order to simplify the procedure in connection with refunds section 18 (9) makes it obligatory upon the person deducting income-tax from " interest on securities " to issue to all security-holders a certificate specifying the amount of the tax deducted from the interest and the rate at which it has been deducted; and similarly section 20 (see paragraph 60) requires the principal officer of a company distributing dividends to issue to shareholders a certificate stating that the company has paid or will pay income-tax on the profits that are being distributed. These certificates (or in the case mentioned in paragraph 59, a certificate by a bank) must be accepted by Income-tax Officers as conclusive proof that tax has been paid.

For the reasons given in paragraph 60 the Income-tax Officer for purposes of refund in the case of dividends, has to assume that the dividends mentioned in the certificate were taxed at the maximum rate current on the date when the dividends were *declared*. In the case both of dividends and of interest on securities, the tax deducted has to be added to the " net " dividend or interest paid for the purpose of calculating both the " total income " of the applicant and the amount of refund due [see paragraph 54, and section 48 (1)].

Applications for refund under the provisions of rule 39 can now be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or, where he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which he ordinarily resides and such Income-tax Officers are required to give the refunds. The applications need no longer be made, as under previous rules, to the Income-tax Officer of the area in which the income-tax was paid. In cases where the applicant is not resident in British India, the application should be made to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was deducted.

The necessity for refunds of tax on Government securities can be avoided, by the procedure laid down in paragraph 58, in the case of persons who are either not liable to the tax or who have a taxable income which is sufficiently stable to justify the Income-tax Officer is assuming that the rate applicable to the total income is not likely to move from one grade to another. Again, as has been pointed out in preceding

paragraphs, the necessity for a refund can also be avoided in the case of persons who have income which has not been taxed, or from which income-tax has not been deducted, at the source, since such persons can claim a set-off against the tax due on that other income.

In cases where a cash refund is necessary, the procedure laid down in rules 36 to 40 should facilitate the granting of refunds. The application must be made in the form prescribed in rule 36 and verified in the manner laid down in that rule and must, under rule 37, be accompanied by a return of the "total income" in the form prescribed in rule 19 unless such a return has previously been made. A false statement in such a return or in such a verification is punishable under the provisions of section 182 of the Indian Penal Code, which are set out in paragraph 63 above. The application must also, where necessary, be accompanied by the certificates mentioned in section 18 (9) or section 20. The applications, under rule 40, need not be presented in person, but may be sent by post or by an authorised agent. In cases where the applicants do not present themselves, the amount of any refund due should be remitted by money order, in which event the cost of the money order is borne by the Government and is not to be deducted from the amount to be refunded.

It should be particularly noted that section 48 does not apply to super-tax (see section 58) since super-tax is not deducted at the source or taxed at the source with the solitary exception of the case referred to in section 57, in which case no claim for any refund can arise.

Any claim to a refund must, under the provisions of section 50 be made within one year from the last day of the year in which the tax was recovered. No claim can be entertained if presented at a later date.

This section should be interpreted as illustrated below in dealing with claims for refund of tax on dividends: Taking the case of a person who received a dividend in January 1923, if he is directly assessed and is a person who does not keep accounts, or whose "previous year" is the income-tax year, an adjustment can be made whenever he is assessed in the income-tax year April 1923 to March 1924, and an application for refund can also be entertained at any time up to 31st March 1924, while if he is not directly assessed, an application for a refund can be entertained at any time up to 31st March 1924. If he keeps accounts and his "previous year" runs, say, from October to September, an adjustment can be made whenever he is assessed in the income-tax year April 1924 to March 1925, and an application for refund can also be entertained at any time in the income-tax year April 1924 to March 1925, if by oversight the adjustment is not made in assessing him or in declaring him not liable.

89. *Relief from double income-tax. (Section 49).*—At a conference between the representatives of the Home Government and of the Dominions and of India an agreement was arrived at to the following effect: That in respect of income taxed both in the United Kingdom and in India there should be deducted from the appropriate rate of the United Kingdom income-tax (including super-tax), the whole of the rate of the Indian income-tax (including super-tax), charged in respect of the same income, subject to the limitation that in no case should the maximum rate of relief given by the United Kingdom exceed one-half of the rate of the United Kingdom income-tax (including super-tax) to which the indivi-

dual tax-payer might be liable and that any further relief necessary in order to confer on the tax-payer relief amounting to the lower of the two taxes (United Kingdom and Indian) should be given by India. That is to say, the arrangement is that where income is liable to taxation both in the United Kingdom and in India, it should pay only at the highest rate leviable in either country. These proposals have been accepted by the Government of the United Kingdom and are embodied in section 27 of the Finance Act of 1920. A copy of that section is given below :

27. (1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income-tax for any year of assessment on any part of his income proves to the satisfaction of the Special Commissioners that he has paid Dominion income-tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income-tax paid or payable by him on that part of his income at a rate thereon to be determined as follows :—

(a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom tax, the rate at which relief is to be given shall be the Dominion rate of tax.

(b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of the United Kingdom tax.

For the purpose of this section, the expression "the appropriate rate of United Kingdom tax" means the rate at which the claimant for the year to which the claim relates has borne or is liable to bear United Kingdom income-tax and where the claimant is liable to United Kingdom super-tax the expression "the appropriate rate of United Kingdom tax" means a rate equal to the sum of the rates at which he has borne or is liable to bear United Kingdom income-tax and super-tax, respectively, for that year.

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income-tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate, and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual any relief to which he may be entitled under the provisions of this part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income as may be necessary to secure that the amount of United Kingdom income-tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV or Case V of Schedule D or in any other provision of the Income-tax Acts, no deduction shall be made on account of the payment of Dominion income-tax in estimating income for the purposes of United Kingdom income-tax, and where income-tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income-tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income-tax shall be deemed to be income arising or received after deduction of Dominion income-tax and an addition shall, in estimating income for the purposes of the United Kingdom income-tax, be made to that income of the proportionate part of the income-tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount of any Dominion income-tax directly charged or chargeable in the Dominion in respect of that income :

Provided that—

(a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the Special Commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under this sub-section, the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI of Schedule D; and

(b) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax, then in assessing or charging income-tax in the United Kingdom in respect of income assessed or charged to income-tax in

that Dominion deduction shall be allowed in estimating income for the purpose of United Kingdom income-tax of an amount equal to the difference between the amount of the Dominion income-tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom income-tax in respect of the Dominion income-tax for the period on the income of which the assessment or charge to United Kingdom income-tax is computed.

In this sub-section the expression dividends includes any interest, annuities, dividends, shares of annuities, pensions, or other annual payments or sums in respect of which tax is charged under the Rules applicable to Schedule C or under Rule VII of the Miscellaneous Rules applicable to Schedule D.

(5) Where under Rule 20 of the General Rules applicable to Schedules A, B, C, D, and E, a body of persons is entitled to deduct income-tax from any dividends, tax shall not in any case be deducted at a rate exceeding the rate of the United Kingdom income tax as reduced by any relief from that tax given under this section in respect of any payment of Dominion income-tax.

(6) Where under the law in force in any Dominion provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax, the obligation as to secrecy imposed by the Income-tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the Government of the Dominion of such facts as may be necessary to enable the proper relief to be given in cases when relief is claimed both from United Kingdom income-tax and from Dominion income-tax.

(7) The Commissioners of Inland Revenue may from time to time make regulations generally for carrying out the provisions of this section, and may, in particular, by those regulations provide :—

- (a) For making such arrangements with the Government of any Dominion to which the last preceding sub-section applies as may be necessary to enable the appropriate relief to be granted.
 - (b) For prescribing the year which in relation to any Dominion income-tax is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income-tax.
- (8) In this section :—
- (a) The expression "Dominion" means any British possession, or any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions :
 - (b) The expressions "United Kingdom income-tax" and "United Kingdom super-tax" mean respectively income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts :
 - (c) The expression "Dominion income-tax" means any income-tax or super-tax charged under any law in force in any Dominion, if that tax appears to the Special Commissioners to correspond with United Kingdom income-tax or super-tax :
 - (d) The expression "Dominion rate of tax" means the rate determined by dividing the amount of the Dominion income-tax paid for the year by the amount of the income in respect of which the Dominion income-tax is charged for that year, except that where the Dominion income-tax is charged on an amount other than the ascertained amount of the actual profits the Dominion rate of tax for the purposes of this section shall be determined by the Special Commissioners.

For the purposes of this section, the rate of United Kingdom income-tax shall be ascertained by dividing by the amount of the taxable income of the person concerned the amount of tax payable by that person on that income before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of this section, and the rate of United Kingdom super-tax shall be ascertained by dividing the amount of the super-tax payable by any person by the amount of that person's total income from all sources as estimated for super-tax purposes.

* * * * *

Under that section a person whose income is assessed both in the United Kingdom and in India is entitled to claim from the authorities of the United Kingdom a refund or rebate of the rate levied in India up to one-half of the English rate.

Section 49 of the Indian Income-tax Act, therefore, provides that where any further relief is to be given in order to secure that such a person

shall not pay a higher rate than the highest rate in either country, such relief will be given by India, subject to the limitation that the relief given in India shall not exceed half of the rate of income-tax and super-tax combined. Up to the year 1921-22 the Indian rates of income-tax and super-tax combined were less than half the rates in the United Kingdom, and, therefore, no claim can be made under this section in respect of tax levied up to that year. Relief can only be claimed in India, when owing to any alteration in the rates, the Indian rate is more than half the English rate, and the amount of relief would merely be the amount by which the Indian rate exceeds half the English rate. The rates prescribed in India in some cases now amount to more than half the English rates as fixed for the year 1924-25. The table below shows the amount of English income-tax and super-tax and the effective rate per rupee contrasted with similar figures for the Indian rates.

ENGLISH.				INDIAN.			
Income.	Income-tax.	Super-tax.	Effective rate per rupee.	Income-tax.	Super-tax.	Effective rate per rupee.	
Rs.	Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.	
30,000	6,750	...	0 3 $7\frac{1}{2}$	2,843	...	0 1 3	
45,000	10,125	1,312	0 4 $\frac{4}{5}$	4,218	...	0 1 6	
60,000	13,500	3,187	0 4 $5\frac{2}{5}$	5,625	625	0 1 8	
75,000	16,875	5,437	0 4 $9\frac{3}{5}$	7,031	1,562	0 1 10	
90,000	20,250	8,062	0 5 $\frac{2}{5}$	8,437	2,500	0 1 $11\frac{1}{3}$	
1,05,000	23,625	11,062	0 5 $3\frac{2}{7}$	9,844	3,594	0 2 $\frac{4}{7}$	
1,20,000	27,000	14,437	0 5 $6\frac{3}{10}$	11,250	5,000	0 2 2	
1,35,000	30,375	18,187	0 5 $9\frac{1}{15}$	12,656	6,406	0 2 $3\frac{1}{9}$	
1,50,000	33,750	21,937	0 5 $11\frac{7}{25}$	14,062	7,812	0 2 4	
2,25,000	50,625	40,687	0 6 $5\frac{23}{8}$	21,094	17,969	0 2 $9\frac{1}{8}$	
3,00,000	67,500	59,437	0 6 $9\frac{6}{25}$	28,125	31,250	0 3 2	
4,50,000	1,01,250	1,00,687	0 7 $2\frac{4}{25}$	42,187	68,750	0 3 $11\frac{1}{3}$	
6,00,000	1,35,000	1,45,687	0 7 $5\frac{1}{50}$	56,250	1,20,312	0 4 $8\frac{1}{2}$	
COMPAN- IES.	0 3 7·2	0 2 6	

NOTE.—The allowances and abatements allowed by the United Kingdom Income-tax Act have not been taken into account in working out the figures of United Kingdom Income-tax in the table. The Income-tax and Super-tax have also been assumed to be charged on the same income. The figures are therefore only useful as generally indicating the relative rates of taxation in the two countries.

It will be observed that the rate for individuals and firms is less than half the English rate up to an income of about 4 lakhs. Persons with such incomes which are wholly taxed both in the United Kingdom and in India can, therefore, claim a refund or rebate of the whole of the Indian rate to be set against the English rate from the authorities in England. The English rate for an income of $4\frac{1}{2}$ lakhs is just over 7 annas and 2 pies and a person who has paid income-tax both in the United Kingdom and in India on an income of $4\frac{1}{2}$ lakhs, could claim a refund from the English authorities of a sum equivalent to 3 annas $7\frac{2}{5}$ pies per rupee on his assessed income and thereafter could claim from the Indian income-tax authorities a refund of $4\frac{9}{10}$ pies per rupee of his assessed income. An assessee must first get his relief from the authorities in the United Kingdom and only then can he claim a refund of the balance from the Indian Income-tax authorities. He cannot claim a rebate in India during an assessment and he must produce proof that he has obtained relief from the English authorities and also proof of the rate of that relief.

It is necessary to emphasise the fact that the relief under this section proceeds and is based upon a comparison of the *rate* of tax in India with the *rate* of tax in the United Kingdom and not of the comparative *amounts* of tax paid in either country. That is to say, what is compared is the rate of the Indian tax paid by the claimant for the Indian year of assessment corresponding to the United Kingdom year of assessment in respect of the part of the claimant's income liable to United Kingdom tax and not the particular amount of such part of his income liable to United Kingdom income-tax as is charged to Indian income-tax. The rate of Indian income-tax paid in respect of the part of the income in question having been ascertained, the relief from United Kingdom income-tax is granted on that part of the income as charged to United Kingdom income-tax for that year of assessment, irrespective of the fact that the amount of the United Kingdom assessment may be greater or less than the amount of the Indian assessment for the corresponding Indian year of assessment or that the amount of relief may fall short of or exceed the amount of Indian tax actually paid. In other words, under this system of relief no enquiry is made in the United Kingdom into any differences of basis of computation under the Indian and United Kingdom rules of assessment, provided that it is clear that from whatever source he derives the income on which he claims relief, the claimant has paid (for the Indian year of assessment corresponding to the United Kingdom year of assessment for which relief is claimed) Indian tax in respect of his income from that source, however that income may have been computed for the purposes of assessment to the Indian tax; and the procedure in India in determining the balance of relief to be given in this country proceeds in exactly the same way. For example, suppose a man resident in the United Kingdom trades in India and is liable to United Kingdom income-tax in respect of the profits on a three years' average and to Indian income-tax on a preceding year's basis; suppose also (ignoring other expenses) that the Indian Act allows as a deduction the payment of annual interest on money borrowed which is

not allowed in the United Kingdom, and that his profits for the years 1 to 4 are as follows:—

Number.	Profits before deduction of annual interest.	Annual interest.
	Rs.	Rs.
1	1,00,000	3,000
2	50,000	6,000
3	30,000	2,400
4	70,000	5,000

The United Kingdom and Indian assessments for the years 4 and 5 are as follows:—

Figures.	United Kingdom assessment.	United Kingdom rate (say.)	Indian assessment.	Indian rate (say.).
	Rs.		Rs.	
4	60,000	As. 4	27,600	A. 1
5	50,000	5s. 4½d.	65,000	A. 1½

Then relief from United Kingdom income-tax will be allowed at 1 anna on Rs. 60,000 for the year 4 and 1½ annas on Rs. 50,000 for the year 5. There will be no claim to any relief in India.

This system of relief is one that was deliberately adopted at the conference, the principle followed being summarised as follows in the report of the United Kingdom Royal Commission, *viz.*:—

“That there will be no interference either by the United Kingdom or by a Dominion with the basis of assessment adopted by any other part of the Empire, and further that the settlement should be independent of increases and decreases in rate of tax and alteration in the basis of assessment whether in the United Kingdom or in the Dominions. This intention is clearly illustrated by the following examples which are given in the report.

Example 1.—A, a British resident, derives a fluctuating unearned income directly from a Dominion whose rate of tax applied to that income is 1s. 6d. in the £. A has

no other income, and his rate of tax in the United Kingdom varies according to the amount of his income. The following figures illustrate the position :—

	United Kingdom	Dominion.
1st year.		
Tax before relief	£1,000 at 3s. 9d.	£600 at 1s. 6d.
Relief	£1,000 at 1s. 6d.	<i>Nil.</i>
Tax after relief	£1,000 at 2s. 3d.	£600 at 1s. 6d.
2nd year.		
Tax before relief	£300 at 3s. 0d.	£900 at 1s. 6d.
Relief	£300 at 1s. 6d.	<i>Nil.</i>
Tax after relief	£300 at 1s. 6d.	£900 at 1s. 6d.

In this example, although it was the same description of income assessed each year, there were wide variations in the amounts assessed in the United Kingdom and in the Dominion. This might happen owing to different methods of computing taxable profit, and the differences are intentionally exaggerated to illustrate the principles to be followed.

Example 2.—B is a British resident receiving as shareholder an income of £900 from a British Company C which derives the whole of its income from a Dominion. In the first place relief will be given to the Company C, and in order to illustrate how this is done, let it be assumed that the Company's profits as calculated for the United Kingdom tax are £60,000, and as calculated for Dominion tax £50,000. Adjustment will be made to the Company as follows :—

	United Kingdom.	Dominion.
Tax before relief	£60,000 at 6s. 0d.	£50,000 at 1s. 9d.
Relief	£60,000 at 1s. 6d.	<i>Nil.</i>
Tax after relief	£60,000 at 4s. 6d.	£50,000 at 1s. 6d.

The Company when paying the dividend to B would deduct 4s. 6d. in the £ United Kingdom tax, and intimate on the dividend warrant that the relief in respect of Double Income-tax was 1s. 6d. in the £.

Let it be assumed that B's dividend of £900 is his total income, so that his proper rate of charge to United Kingdom Income-tax is 3s. 9d. He has suffered Dominion tax to the extent of 1s. 6d. in the £, and his ultimate rate of United Kingdom Income-tax is 2s. 3d. in the £ (3s. 9d. less 1s. 6d.), but he has suffered by deduction 4s. 6d. in the £ and he will accordingly be repaid 4s. 6d. minus 2s. 3d. = 2s. 3d. in the £ on £900.

Example 3.—D is a British resident receiving £900 from Company C, but he has other income arising in the United Kingdom, and his combined rate of Income-tax and Super-tax is 7s. 6d. in the £. He is entitled, therefore, to Double Income-tax relief up to a maximum of 3s. 9d. but the whole of the Dominion tax (1s. 6d. in the £) has already been allowed to the Company C, who deduct 4s. 6d. United Kingdom tax on payment of the dividends, and no further relief is due. D will, therefore, be assessable in respect of the £900 at 1s. 6d. in the £, viz., 7s. 6d. less 4s. 6d. United Kingdom tax deducted, and 1s. 6d. Dominion tax.

It will be noted that in the table at page 138 the amount of relief which a company can get under the English Act is at the rate of 2 annas

in the rupee and that the amount which they can claim from the Indian authorities will be at a rate of 6 pies in the rupee. The reason for the comparative high rates in India as compared with the United Kingdom of the tax on companies is that the Indian rate includes the super-tax on companies while the English rate does not include the United Kingdom Corporation tax. At the same time it must be noted that the Indian rate of 2 annas and 6 pies given in the table for companies is a rate which in actual practice will never be reached. It includes the 1 anna and 6 pies income-tax rate and the flat rate of 1 anna for super-tax; but the flat rate of 1 anna is never charged on the whole of the assessable income but only on the portion of the income in excess of Rs. 50,000. The rate for the portion of the income below Rs. 50,000 is *nil*. In order to get at the comparative rate, the tax paid by the company has to be divided by its total income. Thus in the case of a company with a profit of 1 lakh the comparative rate would merely be 2 annas while the rate in the case of a company with a profit of 2 lakhs, it would merely be 2 annas and 3 pies. In the former case full relief would be obtainable in the United Kingdom and no relief should be claimed in India while in the latter case a relief of 2 annas in the rupee would be obtained in the United Kingdom and of 3 pies in India.

In order to obtain relief in India a claimant is required to supply the official receipt for the United Kingdom income-tax paid, the notice of assessment in particular showing the basis on which the liability has been computed and a certificate of the Income-tax authorities showing what relief has actually been granted to him in the United Kingdom.

The following are further examples illustrating the method to be adopted in calculating relief due under section 49 of the Act:—

Example 1.—A, a married man with one child is resident in the United Kingdom; he has a fixed income of Rs. 10,500 from property in India and has no other income, his liability to tax is:—

In the United Kingdom.				In India.
		Rs.	A. P.	
Assessable income	10,500	0	0	Income-tax on Rs. 10,500 at 9 pies in the rupee, Rs. 492-3-0.
Less Personal allowance . . . Rs. 3,375				
Deduction for child „ 540	3,915	0	0	
Taxable income	6,585	0	0	
Tax on the 1st Rs. 3,375 at as. 2 in the rupee .	421	14	0	
Tax on balance Rs. 3,210 at as. 4 in the rupee .	802	8	0	
*Total tax (before relief in respect of Indian income tax)	1,224	6	0	

* For the purposes of calculating "the appropriate rate of United Kingdom tax" this amount is not to be reduced by any relief granted in respect of any life assurance



The United Kingdom tax (Rs. 1,224-6-0), divided by the taxable income (Rs. 6,585) gives an "appropriate rate of United Kingdom tax" of approximately 2 annas 11·7 pies. A has paid Indian income-tax in respect of the same income at a rate of 9 pies in the rupee, that is, a rate which is less than half the United Kingdom rate and the relief from United Kingdom tax will, therefore, be a sum equal to the Indian rate on Rs. 6,585.

Example 2.—B is a bachelor resident in the United Kingdom with no dependants and has an earned income of £1,000 assessable to United Kingdom income-tax. He has no other income and pays income-tax in India in respect of the income in question. His liability to tax is as follows :—

	United Kingdom.		
	£	s.	d.
Total income	1,000	0	0
Less earned income allowance one-tenth of £1,000	100	0	0
Assessable income	900	0	0
Less Personal Allowance	135	0	0
Taxable income	765	0	0
Tax on 1st £225 at 2s. 6d.	28	6	
Tax on balance £540 at 5s.	135	0	0
*Total tax (before relief in respect of Indian income-tax)	163	2	6

* For the purposes of calculating "the appropriate rate of United Kingdom-tax" this amount is not to be reduced by any relief granted in respect of life assurance premium.

The tax (£163-2-6) divided by the taxable income (£765) gives an "appropriate rate of the United Kingdom tax" of 4s. 3·2d. or 3·41 annas in the rupee; Indian income-tax is payable on this income at a rate of 9 pies in the rupee, so that B is entitled to get relief from the United Kingdom at the rate of 9 pies in the rupee (that is, 11d. in the pound) on £765 and there is no balance of relief to be given in India.

Example 3.—C is a company the whole profits of which are taxed both in the United Kingdom and in India. The Indian rate of tax paid by the company is 2 annas and 3 pies in the rupee while the "appropriate rate of United Kingdom tax" for the company is 5s. in the pound. The company can get relief at the rate of 2/6 in the pound (or 2 annas in the rupee) in the United Kingdom and on proof of payment of United Kingdom tax and of the grant of United Kingdom relief can claim from the Income-tax authorities in India the balance of relief, namely, 3 pies in the rupee.

This section merely provides for relief from double tax where the same income is assessed to tax both in the United Kingdom and in India. It does not provide for relief in other cases.

90. *Prosecution for offences.* (See also paragraph 65.) Prosecution of assesseees for offences under sections 51 and 52 cannot be commenced except at the instance of an Assistant Commissioner and the Assistant Commissioner is, under section 53, empowered to stay any such proceedings or compound any such offence. The power of compounding an offence is one that can be exercised not only after proceedings have been commenced, but before proceedings are instituted at all.

91. *Income-tax records to be kept confidential.* (Section 54.)—While the Act of 1918 merely penalised the disclosure by a public servant of the

particulars contained in any statement or return furnished under the Act, section 54 further penalises the disclosure of any particulars contained in any accounts or documents produced under the Act or in any evidence given or deposition made in the course of proceedings under the Act or in any record of an assessment proceeding or proceedings for recovery of a demand, and debars the Courts from requiring public servants to produce income-tax records or to give evidence respecting the same.

The proviso to sub-section (2) contains provisions stating in what particular cases information may be disclosed. The effect of the provisions is that information obtained in connection with the assessment of incomes and recovery of the tax may be disclosed by public servants to such persons only as act in the execution of the Act and where it may be necessary to disclose the same to them for the purposes of the Act, or in order to, or in the course of, a prosecution for perjury committed in connection with proceedings under the Act. Proviso (c) was inserted mainly for the purpose of extending the protection to every action of a public servant in pursuance of the provisions of the Act or the rules such as the service of a notice by affixture. Apart from these particular cases it is essential that all records should be kept strictly confidential, and, in particular, the practice in certain provinces of furnishing information to local authorities, who impose a tax on "circumstances and property" or a local income-tax, of the details of assessment made by the income-tax authorities must cease. This prohibition applies equally to furnishing such information to other Government departments.

For the meaning of the phrase "public servant" see paragraph 8.

92. *Super-tax*.—The provisions of the Act regarding income-tax other than those specially excepted in section 58 apply also to super-tax which is merely, as stated in section 55, "an additional duty of income-tax." Super-tax is levied at the rates specified in the Finance Act (see last page of Part I of this Manual).

The super-tax on companies is levied at a flat rate on the whole of the profits of a company. This tax on companies, which takes the place of the tax formerly levied at a graded scale of rates on the "undistributed profits" of a company, is levied on the company as such on account of the special privileges which companies enjoy by statute in the shape of corporate finance and limited liability. No refund on account of super-tax on companies is, therefore, allowed to shareholders.

Apart from the tax on companies which stands in a class by itself, super-tax is levied on a scale of graduated rates. While in the case of income-tax the different rates are applied to the *whole* of an assessee's income, the different rates of super-tax are levied on successive "slices" of income, *i.e.*, on the portions of an assessee's income in excess of certain limits or the portions lying between certain limits.

Hindu undivided families are treated for purposes of super-tax, as for income-tax purposes, as separate assesseees.

Unregistered firms are also treated as separate assesseees. Where, however, an unregistered firm itself is not assessed to super-tax (*e.g.*, if its assessable profits are less than Rs. 50,000), in that case only is the income which any individual member of an unregistered firm receives from the firm included in his total income.

Registered firms are not assessed to super-tax, but the shares of partners in registered firms are included in the total income of the individual

partners on which super-tax is levied and similarly the dividends of shareholders received from companies are included in the individual income of those shareholders.

The tax is levied on "total income" and "total income" in all cases means exactly the same thing as total income calculated for income-tax purposes with the solitary exception that where an unregistered firm is itself assessed to super-tax, the share of the profits of a member of the unregistered firm is excluded from his total income for super-tax purposes.

93. *Deduction of super-tax at the source.*—The one exception to the general rule that super-tax is not deducted at the source is that provided for in section 57. That provision is rendered necessary owing to the difficulty of obtaining super-tax from non-residents. Section 57 (1) provides that in order to recover super-tax from the share of the profits of a partner in a registered firm, who is not resident in British India, the resident partners are themselves jointly and severally liable to pay the super-tax due from the non-resident in respect of his share, and sub-section (2) similarly makes the principal officer of a company liable to deduct any super-tax due on dividends payable to a shareholder who, to his knowledge, is not resident in British India. The liability merely attaches in cases where the amount of the profits or dividends payable to the non-resident partner or shareholder is, taken by itself, liable to super-tax on the assumption that it represents the whole income of the non-resident partner or shareholder. The Act does not require the resident partner or the principal officer to obtain from the non-resident partner or shareholder a statement of any other income that may accrue to him in British India. Where there is reason to believe that there is such other income it will be necessary to rely on the provisions of sections 42 and 43 of the Act. In the case of companies the obligation to deduct applies only to dividends, and does not apply to other sums which a non-resident may receive from the company by way of the interest on debentures or remuneration such as director's fees. If the non-resident is himself assessed through an agent, sub-section (3) provides that the amount deducted at the source in this manner shall be taken into account in determining the amount payable by him in respect of any other income.

These provisions should only be rigidly enforced in cases where the tax cannot be easily collected through an agent of the non-resident (section 43). In the case of registered firms it should in most cases be possible to treat the person who registered the firm as the agent of the non-resident partner and to require him to disclose the whole income accruing in India to such non-resident.

94. *Rules.*—Rules made under section 59 of the Act by the Central Board of Revenue are contained in Part II of this Volume. With the exception of the rules first made under the Act, the power to make rules is, under section 59 (3), subject to the condition of "previous publication." The meaning of the phrase "subject to the condition of previous publication" is given in section 23 of the General Clauses Act (Act X of 1897), viz.:—

"Where, by any Act of the Governor General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

95. *Composition not permissible.*—The provision in previous Acts that allowed a system of composition of assessment and enabled the Income-tax Officer under specified conditions to enter into compositions with assesseees has been omitted from the present Act. No composition of assessment can, therefore, now be made although any composition entered into before the present Act came into force must be given effect to for the period for which the agreement was made.

96. *Assessment of Income-tax on married women.*—Although there is no specific provision to this effect in the Act, a married woman is chargeable as if unmarried and has to be separately assessed in respect of her separate income.

Pensions received from funds such as the Indian Military Service Family Pension Fund by a widow on account of her children and on account of herself are distinct and separate from one another. The pension of a minor orphan paid to his or her mother or a duly appointed or recognised guardian should not be included in the taxable income of the mother or guardian for the purposes of income-tax assessment.

97. *Method of serving notices or requisitions.*—Under section 63 of the Act a notice or requisition may be served either by post or in any manner provided for the service of summons under the Code of Civil Procedure. The words "by post" under section 27 of the General Clauses Act, X of 1897, mean "by registered post."

Section 63 (2) specially provides that in the case of firms or Hindu undivided families a notice or requisition may be addressed to any member of the firm or to the manager or any other male member of the family.

98. *The determination of the Income-tax Officer by whom an assessment is to be made.*—While for the reasons given in paragraph 22 every Income-tax Officer is, under section 64 (4), vested with all the powers conferred by or under the Act on an Income-tax Officer in respect of any income, profits or gains accruing or arising or received within the area for which he is appointed, the question of the Income-tax Officer by whom a particular assessee is to be assessed has to be determined in accordance with the provisions of sub-sections (1) to (3) of section 64. Under those provisions, if an assessee carries on business, he has to be assessed by the Income-tax Officer of the area in which his principal place of business is situate; in all other cases an assessee has to be assessed by the Income-tax Officer of the area in which he resides. Where there is any doubt or dispute on any such question, the question is to be finally determined by the Commissioner of the province in which the areas are situate. Where the areas are situate in more than one province, the question is to be determined by the Commissioners of the

provinces concerned in consultation, and where two Commissioners are not in agreement, the question will be determined by the Central Board of Revenue. In all cases of dispute, however, before any such question is determined, the assessee must be given an opportunity of representing his views.

99. *Reference to High Court.* (Section 66.)—Under the Act of 1918 a reference to the High Court on a question of law might be made only if the head of the income-tax department in a province saw fit. He was not required to make any such reference on the application of an assessee if satisfied that the application was frivolous or that a reference was unnecessary. Under section 66 of the Act, the Commissioner of Income-tax has no longer power to withhold a reference on these grounds but is required to state a case to the High Court on the application of an assessee. In order to provide against frivolous or unnecessary applications, sub-section (2) requires that every such application shall be accompanied by a fee of Rs. 100 or such lesser sum as may be prescribed by rule made by the Central Board of Revenue (no lesser sum has yet been prescribed). In order to safeguard the revenue, sub-section (7) provides that the fact that a case has been stated to the High Court shall in no way stop the collection of the tax from the assessee.

An application for a reference to the High Court can only be made after an appeal to the Assistant Commissioner under section 31 or an appeal under section 32 to the Commissioner has been disposed of. An assessee must therefore exhaust his remedies of appeal to the income-tax authorities before requiring a reference to the High Court. As it is desirable that questions of principle should, so far as possible, be settled by the revenue authorities, the proviso to sub-section (2) provides that if on receipt of such an application the Commissioner is himself prepared to give a ruling in favour of the assessee on the point of law raised, the applicant may withdraw his application for a reference to the High Court in which event the fee paid shall be refunded.

No refund should however be made in cases in which Commissioner refuses to state a case to the High Court as under the substantive part of Section 66 (2), it is the making of an application for a reference to the High Court which involves the liability to pay the fee, and such liability therefore arises irrespectively of whether such reference is or is not made. The refund of fee, except in the circumstances specified in the proviso to Section 66 (2), is therefore not warranted by the Act.

No reference may be made to the High Court on a question of fact. The Commissioner, under these provisions, may therefore only withhold an application for a reference to the High Court if he considers that a point of law is not involved. If he does withhold it on that ground, the applicant under sub-section (3) may apply to the High Court, within six months from the date on which he is served with notice of the refusal to make a reference for a *mandamus* requiring the Commissioner to state a case, and if the High Court issues such a requisition, the Commissioner must state a case.

The Commissioner retains the power to state a case to the High Court on his own motion or on a reference from any income-tax authority subordinate to him. No authority other than the Commissioner is authorised to state a case for the High Court.

The application for a reference must be made by the assessee within one month of the passing of an appellate order, and the reference to the High Court must be made by the Commissioner within one month of the receipt of the application.

100. *Assessment of insurance companies.*—Under section 59 (2) (ii) special rules have been made prescribing the manner in which and the procedure by which, income, profits and gains shall be arrived at in the case of insurance companies. The rules so made are rules 25 to 32 while rule 35 deals with the particular case of non-resident companies.

Under these rules the income, profits and gains of *life* assurance companies incorporated in British India are determined by taking the annual average of the total profits disclosed by the last actuarial valuation, adding thereto any deductions made from the gross income in arriving at the actuarial valuation which are not admissible under the income-tax Act and adding also any Indian income-tax deducted from or paid on income derived from investments before such income is received. If the *Indian income-tax* deducted at the source from interest on investments exceeds the tax on profits thus calculated, a refund is permitted of the amount by which the deduction from interest on investments exceeds the tax payable on profits. The same provisions under rule 26 apply also to the determination of the income, profits and gains derived from the *annuity and capital redemption* business of life assurance companies, the profits of which can be ascertained from the results of an actuarial valuation.

For the purpose of refund in such cases it is the annual average of the tax deducted from the interest on the company's investments at the source that is to be taken and not, as has been sometimes claimed by insurance companies, the tax actually paid during a particular year of assessment. The reason for this is obvious. The method of assessment based on the previous valuation is itself a concession which, if the companies wish to enjoy, they must take as a whole. If there were to be a subsequent re-adjustment with reference to any of the transactions in the current actuarial period, this would have to be made after the period was closed with reference to the transactions of the company as a whole during that period, but this course would obviously not be suitable as it would mean very long deferred adjustments.

In *other classes* of insurance business (fire, marine, motor car, burglary, etc.), an annual calculation of profits is practicable, and rule 29 provides in the case of those particular businesses for the method of treating sums placed by companies carrying on some or all of these branches of insurance business to reserves for unexpired risks. The reasons underlying the concession granted in this rule should be carefully noted. The profits derived, for instance, by a Fire Insurance Company from the premia which it receives cannot be finally determined until the policies issued in return for the premia have expired and the risks to the company thereunder have terminated, and, as the periods during which the risks endure will not ordinarily coincide with the period on which the assessment to income-tax is based, it is necessary to frame some estimate of the expenditure which the company will be called upon to incur owing to the fact that the risks covered by its premium income in the year of assessment have not entirely ceased. With proper safeguards to prevent manipulation of the accounts, this estimate can equitably be made by

treating sums placed by insurance companies carrying on these classes of business to their reserves for unexpired risks as expenditure incurred solely for the purpose of earning the profits of the business. And where, as not infrequently occurs, the reserve is divided into two parts of which the first is intended to cover normal unexpired risks and is generally reckoned at a fixed percentage of the premiums, and the second is intended to cover exceptional losses from widespread calamities, the rule allows this treatment to additions to both parts of the reserve. The safeguards against abuse which the rule imposes are as follows:—

- (1) All sums on account of unexpired risks, which a company wishes to have treated as expenditure for income-tax or super-tax purposes, must actually be credited to a Fund in the accounts of the Company;
- (2) They must also be specifically appropriated to meet liabilities under existing contracts; and
- (3) The contracts must be with policy-holders.

The only other fund established by insurance companies for which special provision is made in the rules (Rule 30) is the Investment Reserve Fund. Amounts actually credited by an insurance company of any kind in the ordinary accounts of its business for the accounting period to its Investment Reserve Fund for the purpose of meeting depreciation in the value of its securities can be treated as expenditure incurred for the purpose of earning the profits of the business in determining the taxable income of the insurance company in that year. The reasons for this departure from the general rule that reserves are not allowed as a business expense are as follows:—In the first place it may be noted that these adjustments are not optional; the company is required to make them in order to ensure that its assets are not overstated in the valuation. The transfer of sums by a Life Assurance Company to Investment Reserve Fund differs, moreover, essentially from the placing of amounts to reserve by a bank or ordinary commercial company, either for the purpose of extending its business, or for the provision of additional working capital: the sums thus placed to reserve are practically speaking composed of undistributed profits. There is also a substantial difference between this transaction on the part of an Insurance company, and that by which a bank writes off the depreciation of the securities which it holds. A bank meets depreciation by reducing its Reserve Fund: a Life Insurance Company meets it by reducing its Life Assurance Funds, and this reduction may be made either by writing down its assets or by leaving the assets unaltered, and setting up as a liability an Investment Reserve Fund equal to the depreciation. The latter course is usually adopted: but in both cases the depreciation is a loss, and to tax the amount of depreciation would lead to the anomalous result that the greater the loss to the company the greater would be the amount which it is required to place to its Investment Reserve Fund, and consequently the greater the tax it would have to pay.

On the other hand should the accounts show a credit for “appreciation” of assets, rule 30 provides for such appreciation being taxed. The words “as has been otherwise taken into account” in the latter portion of rule 30 mean “having been carried to the life assurance fund or otherwise taken into account.”

The reason for the use of the word "may" instead of "shall" in rules 27, 29 and 30 is that while the concessions conferred by these rules should be granted as a general practice the income-tax authorities retain a discretion to refuse them where the concessions have been abused.

Companies carrying on *Dividing Society or Assessment* business are in a different position to the insurance companies proper in that they have not to build up funds similar to the Life Assurance Fund of ordinary Life Assurance business, and their profits are not ordinarily ascertainable by actuarial valuation. It is necessary, therefore, to fix some arbitrary method of determining the taxable income of companies transacting these kinds of business, and under rule 31 this is done by taking 15 per cent. of the premium income in the "previous year."

INDEX TO INCOME-TAX MANUAL VOLUMES I AND II.

Abatements. (See Allowances—Exemptions.)

Abu, District of, application of the Act to . . . P. 1.

Abwabs Case No. 1, P. 2.

Accounting method, for calculating assessable income S. 10 (3), 13, P. 12, 35, 36.

change of, Income-tax Officer
may sanction P. 36.

Income-tax Officer's discretion
in regard to method P. 36.

Accounting period, for determining assessable income (see "Previous year") . . . S. 2 (11), 3, P. 5, 13.

Accounts, failure by assessee to produce when called for, assessment how to be made in such cases S. 23 (4), P. 66, 67.

procedure when failure not wilful,
fresh assessment to be made S. 27, P. 64.

prosecution for failure S. 51 (d), P. 66.

right of appeal forfeited S. 30 (1), Prov. P. 66.

Income-tax Officer's power to call for,
issue of notice S. 22 (4), P. 66.

restriction on S. 22 (4), Prov., P. 66.

'Accrue,' meaning of Case No. 4.

Adjustment, system abolished P. 13.

under section 19 of Act VII, 1918 . . . S. 68, Prov., P. 13.

Administrator-General, liability of, for tax due by beneficiary S. 41, P. 82.

Advances of pay to Government Officer, exempt . . . P. 23.

Agency rules P. 22 (2)

Agent, of non-resident, includes person treated as such by Income-tax Officer, after notice . . . S. 43, P. 84.

Agents, assessable on behalf of non-residents. . . . S. 40, 42 (1), P. 14, 50, 83, 84.

Agricultural income. (See Indigo—Sugar—Tea and Cases Nos. 1, 2 and 3.)
defined S. 2 (7), P. 2.

N.B.—"Cases" have been printed in Volume II of the Income-tax Manual.

Agricultural income—contd.

exempt	S. 4 (3) (viii), P. 2.
Exemption not applicable to income from agriculture abroad	S. 2 (1), P. 2.
Forest or trees—Income derived from, when not liable	P. 2.
income partly derived from agriculture, assessment of power of Central Board of Revenue to make rules for assessment of	R. 23, 24, P. 2. S. 59 (2) (a) (i).
Agricultural produce, market value of	R. 24.
Agricultural produce, sale of raw, by cultivator, etc., income from exempt	P. 2.
Air Force, wound and injury pensions exempt	P. 16 (23), (24).
Allowance, benefit or perquisite, special, exempt	S. 4 (3) (vi).
Allowances, House-rent, when exempt	P. 20.
Allowances, inadmissible. (See Deductions from taxable income.)	
Allowances, in assessing business income admissible—	
bad debts (see 'Bad debts').	
borrowed capital, interest on	S. 10 (2) (iii), P. 41.
cesses, Bihar and Orissa Mining Settlements Act, 1920, levied under Jharia Water Supply Act, 1914, levied under	Case No. 13. Case No. 13.
debentures, interest on	P. 41.
depreciation on buildings, machinery, plant or furniture, etc.	S. 10 (2) (vi), P. 43, R. 8-9.
insurance against loss of profits, premium, when admissible	P. 42.
insurance of buildings, etc.	S. 10 (2) (iv), P. 42.
irrecoverable loans (see Bad debts)	
land revenue, local and municipal taxes	S. 10 (2) (viii), P. 45, 50.
local rate or tax not dependent on profits	P. 45, 50, Case No. 16.
obsolescence of machinery, etc.	S. 10 (2) (vii), P. 44.

Allowances, in assessing business income admissible—*contd.*

partners' capital, interest on, when admissible	P. 41.
pensions to ex-employees	P. 46.
Provident funds, employers' contributions, when permissible	P. 46.
rent of premises	S. 10 (2) (i), P. 39.
repairs to machinery, plant or furniture	S. 10 (2) (v).
repairs to premises	S. 10 (2) (iv), (v), P. 40.
reserve, sums placed to a pension when permissible	P. 46.
superannuation funds, sums contributed to by employers, when permissible	P. 46.

Allowances in assessing income from other sources

admissible	S. 12 (2), P. 49.
interest on loan raised to purchase securities	P. 49.
Banker's certificate	P. 49.

Allowances in assessing professional earnings, admissible

S. 11 (2), P. 50.

Allowances, in assessing property, admissible—

collection charges	S. 9 (I) (vi), P. 32.
not to exceed 6 per cent.	R. 7.
ground rent	S. 9 (I) (iv) & (v), P. 50.
insurance	S. 9 (I) (iii), P. 31.
insurance against loss of rent, premium, when admissible	P. 31.
land revenue	S. 9 (I) (v), P. 50.
mortgages, interest due under	S. 9 (I) (iv), P. 31.
repairs	S. 9 (I) (i) & (ii), P. 30.
vacancies	S. 9 (I) (vii), P. 33.

Allowances in assessing property, inadmissible

P. 29, 50.

Allowances, leave, paid in United Kingdom when liable

P. 25 (see Exemptions).

Amortisation of capital, depreciation on account of, inadmissible

P. 43.

Angul, District of, application of the Act to

P. 1.

income of persons, other than persons in the service of the Government, residing in, exempt

P. 16 (26).

Annual value , of house property, defined . . .	S. 9 (2), P. 28.
of house property in owner's residential occupation, defined . . .	S. 9 (2), Prov., P. 28.
Annuity , deferred, exemption	S. 7 (1), Prov., P. 10, 53.
Annuity , included in term " salary "	S. 7 (1), P. 23.
Annuity , under will, liable	P. 21.
Annuity and capital redemption business , profits how calculated	R. 26, P. 100.
Appeal , to Assistant Commissioner—	
against assessment	S. 30 (1), P. 75.
against decision regarding accounting method	P. 36.
against penalty for concealment of income	S. 30 (1), P. 75.
against penalty for failure to notify discontinuance of business	S. 30 (1), P. 75.
against refusal to re-assess	S. 30 (1), P. 64.
Appeal , to Commissioner—	
against enhancement of tax by Assistant Commissioner	S. 32 (1), P. 77.
against penalty for concealment of income	S. 32 (1), P. 77.
Appeal , forfeiture of right of	S. 30 (1), Prov., P. 64, 66.
form of	S. 30 (3), 32 (2), R. 21, 22.
fresh assessment on	S. 31 (3) (b).
hearing of	S. 31 (1), P. 76.
adjournment of hearing	S. 31 (1).
inquiry on	S. 31 (2), P. 76.
limitation	S. 30 (2), 32 (1).
suspension of payment of tax pending disposal of	S. 45, P. 87.
verification	S. 30 (3), 32 (2), P. 75, R. 21, 22.
Appeal , departmental, to Local Government by Assistant Commissioner or Income-tax Officer	P. 22.
Appellate powers , of Assistant Commissioner	S. 31 (2), (3), P. 76.
of Commissioner	S. 32 (3).
Application of Income-tax Act. (See Exemptions.)	
Appointment of Assistant Commissioner	S. 5 (4), (5), P. 22 (2).
of the Central Board of Revenue	P. 22 (1).
of Commissioner	S. 5 (3), (5), P. 22 (2).

Appointment—contd.

of Income-tax Officers S. 5 (4), (5), P. 22 (2),
(4).

Appointments, approval of Local Government when
required P. 22 (2).

Arrear of rent of land, interest on—when liable to
income-tax P. 2.

Assessee, defined S. 2 (2), P. 3.
personal attendance of S. 23 (2), 61, P. 68, 88.
personal expenses of, deduction in-
admissible P. 37.
representation of, in proceedings S. 61, P. 68.
returns, must be signed by P. 68.

Assessment, S. 23.
cancellation of, by Assistant Commis-
sioner on appeal S. 31 (3).
cancellation of, by Income-tax Officer,
when sufficient cause shown S. 27, P. 64.
confirmation of, on appeal S. 31 (3).
discontinuance of business S. 25 (1), (2), P. 71.
enhancement of, by Assistant Com-
missioner on appeal S. 31 (3) (a), P. 76.
appeal against such order S. 32, P. 77.
appellant to show cause against
order of enhancement S. 31 (3), Prov.
fresh assessment, on appeal S. 31 (3) (b).
fresh assessment when sufficient cause
shown, by Income-tax Officer S. 27, P. 64.
appeal against refusal to make
fresh assessment S. 30 (1), P. 75.
income escaping assessment, method
of assessing S. 34, P. 79.
mistakes in, rectification of S. 35, P. 80.
order of S. 23 (3).
copy of, to be granted free P. 73.
place of S. 64, P. 98.

Assets, wasting, depreciation on, inadmissible . . P. 43.

Assistant Commissioner, appeal to, against assess-
ment, penalty for con-
cealment, or failure to
give notice of disconti-
nuance of business, or
refusal to make fresh
assessment S. 30 (1), P. 36, 64, 66,
75.

Assistant Commissioner—*contd.*

appeal to	
forfeiture of right of	S. 30 (1), Prov., P. 66, 75.
form of	S. 30 (3), R. 21, P. 75.
fresh assessment on .	S. 31 (3) (b).
hearing of	S. 31 (1), P. 76, 77.
adjournment of	
hearing	S. 31 (1).
inquiry on	S. 31 (2), P. 76.
limitation	S. 30 (2).
extension of, by	
Assistant Com-	
missioner	S. 30 (2).
suspension of pay-	
ment of tax pend-	
ing disposal of . . .	S. 45, P. 87.
verification of . . .	S. 30 (3), R. 21.
appeal to Commissioner	
against orders of, en-	
hancing assessment or	
imposing penalty for	
concealment of income	S. 32, P. 77.
appellate powers of. .	S. 31 (3), P. 76.
appellant to show cause	
against enhancement .	S. 31 (3), Prov.
appointment of, by Central	
Board of Revenue . .	S. 5 (5).
appointment of, by Com-	
missioner	S. 5 (4).
subject to control of	
Governor-General,	
exercised through	
Local Government	S. 5 (4), P. 22 (2).
Commissioner may direct	
to exercise powers of	
Income-tax Officer . .	S. 5 (4).
Commissioner may exer-	
cise powers of	S. 5 (4).
defined	S. 2 (3).
dismissal of, appeal to	
Local Government . .	P. 22 (2).
increment of pay, appeal	
to Local Government	
against order withhold-	
ing	P. 22.

Assistant Commissioner—*concl'd.*

Power to call for return of members of firm or Hindu Undivided family	S. 38 (1).
power to call for return of names of beneficiaries.	S. 38 (2).
power to compound offence	S. 53 (2), P. 90.
power to direct assessment of resident on profits of non-resident	S. 42 (2).
power to impose penalty for concealment of income	S. 28 (1), P. 65.
copy of order to be sent to Income-tax Officer	S. 28 (2).
power to inspect register of shareholders, etc., of company	S. 39, P. 67.
power to issue commissions for the examination of witnesses	S. 37 (c), P. 67.
power to order prosecutions	S. 53 (1), P. 65, 90.
power to stay prosecutions	S. 53 (2), P. 90.
power to summon documents and witnesses	S. 37 (a), (b), P. 67.
power to take evidence on oath	S. 37 (b).
proceedings before, are judicial proceedings	S. 37, P. 67.
Association, liability to tax of	S. 3, 55, 56, 63 (2), P. 3.
principal officer of, defined	S. 2 (12), P. 6.
return of employés by	S. 21, R. 17.
service of notice on	S. 63 (2).
Assurance. (See Insurance.)	
Auditors, approved, profit and loss statement by	P. 66.
Authorities	S. 5, P. 22.
Bad debts, deduction not permissible if accounts kept on cash basis	P. 35.
deduction permissible if accounts kept on mercantile basis	P. 35.

Bad debts—contd.

- loans, irrecoverable, deduction when permissible P. 38.
- reserve for bad debts, sums placed to, deduction not permissible P. 37.
- Balance sheet**, foreign income not taxable merely by reason of entry in S. 4 (2), Explanation.
- Band funds**, regimental, compulsory payments to, not liable to tax P. 16 (4).
- Bangalore, Civil and Military Station**, application of the Act to P. 1.
- Bank**, securities held as part of capital or reserve of, depreciation on, not a permissible deduction P. 43.
- realisation of, profit on, not assessable P. 43.
- Banker**, certificate by, of deduction of interest on securities P. 58.
- certificate by, of interest paid on loan for purchase of securities P. 26.
- Banking business**, irrecoverable loan — admissible deduction P. 38.
- Baroda, Cantonment of**, application of the Act to P. 1.
- Begging**, income from professional, assessable P. 21, Illustration (3).
- Beneficiaries**, trustees assessable on behalf of S. 40, 41, P. 82.
- Berar**, application of the Act to P. 1.
- Betting**, casual gains not assessable P. 21, Illustration (2).
- Bhikanpur Sugar Concern** Case No. 2.
- Board of Revenue, Central**, (See Central Board of Revenue).
- Bombay Presidency**, British administered areas in, application of the Act to P. 1.
- Bonus**, for services rendered, not exempt to retiring employee, inadmissible deduction on P. 21.
- Books**, authors' profits, assessable P. 46.
- Book-makers**, profits of, assessable P. 21, Illustration (5).
- P. 21, Illustration (2).

- Book profits and losses**, enter into calculation of income on mercantile system P. 35.
- Borrowed capital**, interest on. (See Allowances.)
- British Baluchistan**, application of the Act to . . . S. 1 (2), P. 1.
- British Indian Subject**, income paid to, outside British India, when chargeable S. 7 (2), P. 1, 14, 24.
- Buildings**. (See Allowances, Deductions from taxable income, Property).
- Burglary Insurance Company**, assessment of . . . P. 100.
- Business**, assessment of profits from. (See Allowances, Deductions from taxable income—Exemptions).
- casual gains from, assessable S. 4 (3) (*viii*), P. 21, Case No. 24.
- meaning and examples of — Case Nos. 22 & 24.
- change of ownership, assessment S. 26, P. 71, 72.
- deductions admissible in assessing. (See Allowances.)
- deductions inadmissible in assessing, (see Deductions from taxable income) . . . P. 37.
- definition of S. 2 (4).
- income from mining rents and royalties not “income from business” . . . Case No. 6.
- discontinuance of, assessment, (business assessed under Act of 1918) S. 25 (3), P. 13, 71.
- discontinuance of, assessment, (businesses commenced after March 1922) . . . S. 25 (1), P. 13, 71.
- discontinuance of, assessment, notice to be given to assessee S. 25 (4).
- discontinuance of, assessment on period subsequent to end of previous year, discretionary P. 13.
- discontinuance of, notice to be given by assessee S. 25 (2).
- penalty for failure to give notice S. 25 (2).
- appeal against penalty S. 30 (1), P. 75.
- discontinuance of, recovery of tax S. 44, P. 71.
- Business abroad**. (See Non-residents.)
- Business abroad**, profits and gains of, when taxable . . . S. 4 (2), P. 14.

- Business connection in British India.** (See Non-residents).
- Business expenses** (see Allowances, Deductions from taxable income.)
- Business premises** (see Allowances, Deductions from taxable income).
 annual value of, not taxable under "Property" . . . S. 9 (1), P. 27.
- Businesses, branch, power of Income-tax Officer** . S. 64 (4), P. 22 (4), 61.
 new, assessment of . . . P. 68.
- Cancellation of assessment, on appeal** . . . S. 31 (3) (c).
 when cause is shown . . . S. 27, P. 64.
- Cancellation of order enhancing assessment, by Commissioner** . . . S. 32 (3).
- Cancellation of order imposing penalty, by Assistant Commissioner** . S. 31 (3) (c).
 by Commissioner . S. 32 (3).
- Capital** (see Allowances, Deductions from taxable income).
- Capital, borrowed, subscriptions to certain Mutual Benefit societies included in** . S. 10 (2) (iii), Explanation, P. 41.
- Capital expenditure, inadmissible** . . . P. 37.
- Capital, imported into British India, not liable** . P. 14.
- Cash basis, of accountancy** . . . P. 12, 35.
- Casual receipts, when exempt** . . . S. 4 (3) (vii), P. 21.
 examples . . . P. 21, Case No. 12.
- Central Board of Revenue, defined** . . . S. 2 (4A)
 functions of . . . P. 22.
 power to appoint Assistant Commissioners, Commissioners and Income-tax Officers . . . S. 5 (5), P. 22.
 power to declare foreign association to be a Company . . . S. 2 (6), P. 4.



Central Board of Revenue—*contd.*

power to define previous year in certain cases, and to delegate such power	S. 2 (11) (b), P. 5.
power to determine place of assessment	S. 64 (3), P. 98.
assessee to be heard	S. 64 (3), Prov., P. 98.
power to direct to whom tax deducted from salaries and interest on securities, should be paid	S. 18 (6), 46 (5), R. 10-12, P. 87.
power to make rules	S. 59, P. 22, 94.
power to prescribe Mutual Benefit Societies	S. 10 (2) (iii), Explanation, P. 41.
power to prescribe person who should make returns of employees	S. 21, R. 15, P. 61.
Central India, British administered areas in, application of the Act to	P. 1.
Change of ownership	S. 26, P. 71, 72.
recovery of tax	S. 44, P. 71.
Charges. (See Allowances, Deductions from taxable income.)	
Charging sections, Income tax	S. 3, P. 3.
Super-tax	S. 55, P. 3.
Charitable Institution, voluntary contributions to, exempt	S. 4 (3) (ii), P. 17.
Charitable Institutions, purposes and trusts, exemption applies if income set aside for, need not be actually spent in year of account	P. 17.
Charitable or religious purpose, income from, liable before the property was settled	Case No. 10.
profits of trading set apart for—not exempt	Case No. 17.
Charitable purposes, defined	S. 4 (3) <i>ad fin.</i>

Charitable purposes—*contd.*

- income from property held for,
when exempt S. 4 (3) (i) (ii), P. 17.
- Charity**, expenditure on, inadmissible as a deduction P. 37.
- Civil Court**, portion of salary withheld under order of, taxable P. 23.
- Civil Courts**, jurisdiction barred S. 67.
prohibited from summoning income-tax records S. 54 (1).
- Coal**, depreciation on, as a wasting asset, inadmissible P. 43.
- Coal Mines**, cesses levied under the Bihar and Orissa Mining Settlements Act, 1920, and Jharia Water Supply Act, 1914, admissible as business expense Case No. 13.
shafts, tramways, sidings, depreciation allowances P. 42.
- Collection charges**, allowances for S. 9 (1) (vi), P. 32.
maximum of 6 per cent. S. 9 (1) (vi), R. 7, P. 32.
- Collection of tax.** (See Recovery.)
- Collector**, recovery of tax by S. 46 (2), P. 87.
- Colonial Treasuries**, salary, etc., drawn at, by Officer on duty or leave P. 16 (19) & (20).
- Commission**, included in "Salaries" S. 7 (1).
partner's, inadmissible as a deduction P. 41.
- Commission**, issue of S. 37 (c), P. 67.
- Commissioner of Income-tax**, appeals to. (See Appeals.)
appointment of, by Central Board of Revenue S. 5 (5), P. 22 (2).
appointment of, by Governor-General S. 5 (3), P. 22 (2).
recommendation of Local Government to be considered S. 5 (3).

Commissioner of Income-tax—*contd.*

Assistant Commissioners and Income-tax Officers appointed by, and subordinate to . . .	S. 5 (4), P. 22 (2).
definition of . . .	S. 2 (5).
functions of . . .	P. 22 (2).
powers . . .	
appellate powers . . .	S. 32, P. 77.
power to appoint Assistant Commissioners and Income-tax Officers . . .	S. 5 (4), P. 22 (2).
control of Local Government . . .	P. 22 (2).
power to determine place of assessment in case of dispute . . .	S. 64 (3), P. 98.
assessee to be heard . . .	S. 64 (3). Prov., P. 98.
power to determine "previous year" . . .	S. 2 (11) (b), P. 5.
power to direct that powers of Assistant Commissioner and Income-tax Officer shall be exercised by Commissioner and Assistant Commissioner . . .	S. 5 (4), P. 22 (2).
power to direct recovery of arrears of income-tax like municipal tax or local rate and by what authority . . .	S. 46 (3) & (4), P. 87.
power to issue commission . . .	S. 37 (c).
power to levy penalty for concealing income . . .	S. 28 (1) P. 65.
copy of order to be sent to Income-tax Officer. . .	S. 28 (2)
power to refer case to High Court . . .	S. 66, P. 99.

Commissioner of Income-tax—concl'd.

may allow interest on refund in such cases . . .	S. 66 (7), Prov.
power to sanction prosecution for disclosure of information by public servant . . .	S. 54 (2), Prov.
power to summon witnesses and documents . . .	S. 37 (b).
power to take evidence on oath . . .	S. 37 (a)
powers of review, (see Review powers)	S. 33, P. 22 (2), 78.

Commissioner, proceedings before, are Judicial proceedings S. 37.

Company, assurance, (see Insurance Company).

defined	S. 2 (6), P. 4.
flotation expenses (see Shares, cost of Issuing).	
preparation and submission of annual returns of income	S. 22 (1), P. 62, 64, 65, R. 18.
preparation and submission of annual returns of salaries	S. 21, R. 16, 17, P. 61.
principal officer of, to furnish certificates of deduction of income-tax, to shareholders	S. 20, R. 14, P. 60, 88.
profits of, assessed at maximum rate	Fin. Act, P. 60.
register of members of, power of income-tax authorities to inspect	S. 39, P. 67.
list of members not to be called for	P. 67.
shareholder in, refund of income-tax to	S. 48 (1), R. 14, 37, 38, P. 10, 56, 60, 88.
super-tax, liability to	S. 55, P. 11, 92.
charged at flat rate	Fin. Act, P. 92.

Compensation for death or injuries, sums paid as, not liable S. 4 (3) (v), P. 16. S. 53 (2), P. 90.

Composition of offences may be made before proceedings instituted P. 90.

Composition of tax, not allowed P. 95.
under old Act remains in force P. 95.

- Concealment of income**, penalty for . . . S. 28 (1), P. 64, 65.
 appeal against . . . S. 30 (1), 32 (1), P. 75, 77.
 prosecution for . . . S. 51 (c), P. 64.
- Consignment business** (see Non-residents).
- Consignments**, Income-tax Officer not to call for
 statement of — from Railway
 Company . . . P. 67.
- Consular employees** (see Exemptions).
- Consuls, foreign** (see Exemptions).
- Contract of indemnity** loss recoverable under, in-
 admissible . . . P. 37.
- Contracts, Wagering**—Profits from—taxable . Case No. 23.
- Co-operative societies**, dividends of, exempt from
 income-tax . . . P. 16.
 liable to super-tax . . . P. 16.
 interest on securities held
 by, liable to income-tax . P. 16.
 profits of, exempt from
 income-tax . . . P. 16.
 liable to super-tax . . . P. 16.
- Copies**, of assessment orders, to be granted free . P. 73.
- Courts, civil**, jurisdiction barred . . . S. 69.
 receiver appointed by, taxable on
 behalf of estate . . . S. 41, P. 82.
 indemnification of . . . S. 65.
 salaries withheld under orders of,
 liability to tax . . . P. 23.
- Court, High** (see High Court).
- Courts of Wards**, chargeable to tax . . . S. 41, P. 82.
 indemnification of . . . S. 65.
- Cultivator**, proceeds of sale of raw produce by,
 exempt . . . P. 2.
- Death or injuries**, compensation for, not liable . S. 4 (3) (v), P. 16.
- Debenture-holders**, register of, power of Assistant
 Commissioner and Income-
 tax Officer to inspect . . . S. 39, P. 67.
 prosecution for refusing to allow
 inspection, etc. . . S. 51 (e).

Debentures, foreign, interest on, when liable. ¶ . P. 15.

Deduction of income-tax (see Refunds).

omission to deduct direct
levy of tax

S. 19, P. 56.

Deduction of income-tax from interest on securities S. 18 (3), P. 21, 26, 58.
 failure to deduct, personal liability . . . S. 18 (7), P. 56.
 prosecution S. 51 (a).
 sums deducted, certificate of . . . S. 18 (9), R. 13, P. 58.
 prosecution for failure to furnish . . . S. 51 (b).
 from salaries S. 18 (2), P. 23; 53, 57.
 arrears of tax, deduction of . . . S. 46 (5), P. 87.
 failure to deduct, personal liability . . . S. 18 (7), P. 56.
 prosecution. S. 51 (a).
 minimum income for deduction . . . S. 21 (a), R. 16.
 power to adjust excess or deficiency . . . S. 18 (2), P. 57.
 recovery by other methods, not barred. . . S. 18 (8).
 sums deducted, included in taxable income . . S. 18 (4), P. 54.
 sums deducted, payment of, to credit of
 Government S. 18 (6), R. 10-12.
 sums deducted, treated as tax paid . . . S. 18 (5), P. 56.
 credit to be given in assessment of follow-
 ing year S. 18 (5), P. 56.

**Deduction of super-tax, from dividend payable to
non-resident** S. 57 (2), P. 93.

Deductions from annual value, what admissible . . . S. 9 (1), P. 29, 50.

**Deductions, from taxable, income admissible (see
Allowances, Exemptions).**

**Deductions, from taxable income, inadmissible,
examples of :—**

amortisation of capital, depreciation for. . . P. 43.
 assets, cost of addition, alteration, extension,
 etc. P. 37.
 bonus to retiring employees P. 46.
 brokerage on loans (in assessing property) . . P. 29.
 capital expenditure P. 37.
 cesses (in assessing income from mining royal-
 ties) P. 50 Case No. 6.
 charity, expenditure on P. 37.
 commission, partners P. 41.
 compensatory local allowance P. 20.
 cutch exchange compensation allowance . . . P. 20.
 depreciation, except as allowed in S. 10 (2) (vi) R. 8, P. 37, 43.
 expenditure not incurred solely for the purpose
 of earning the profits taxed P. 37.

**Deductions, from taxable income, inadmissible,
examples of :—*contd.***

income-tax	P. 37.
income-tax and excess profits duty paid in England	P. 50, Case No. 7.
legal charges relating to loans, etc.	P. 29.
losses of previous years	P. 37.
municipal and local rates (in assessing pro- perty)	P. 29.
partners' drawings, pensions and salaries	P. 37, P. 46, Case No. 15.
partners' capital, interest on	P. 37, Case No. 19.
pensions, ex-partners'	P. 37, 46.
private or personal expenditure	S. 11 (2), 12 (2), P. 37.
rental value of business premises owned by assessee	P. 37.
reserve for bad debts, or equalisation of dividends	P. 37.
reserve, insurance	P. 42.
rolling stock of railways, depreciation on	P. 43.
salaries, partners'	P. 37.
super-tax	P. 37.
taxes conditional on earning profits	P. 50, Case No. 6.
taxes except land revenue and local rates or municipal taxes on business premises.	P. 37.
taxes paid abroad	P. 50, Case No. 7.
wasting assets, depreciation on	P. 43.

**Default, in making return or producing accounts,
etc.—**

forfeiture of right of appeal	S. 30 (1), Prov., P. 64, 66.
method of assessment	S. 23 (4).

Default, in payment of tax—

penalty for default	S. 46 (1), P. 87.
personal liability in case of failure to deduct tax at source	S. 18 (7), P. 56.
prosecution for	S. 51 (a), P. 56.
recovery of tax from defaulter	S. 46, P. 87.

Deferred annuity, deduction towards, exempt	S. 7 (1) Prov., P. 10, 53.
--	----------------------------

Definitions—

Agricultural income	S. 2 (1), P. 2.
Assessee	S. 2 (2), P. 3.
Assistant Commissioner	S. 2 (3).
Business	S. 2 (4).
Commissioner	S. 2 (5).
Company	S. 2 (6), P. 4.
Income-tax Officer	S. 2 (7).

Definitions—*contd.*

Magistrate	S. 2(8).
Person	S. 2 (9), P. 3.
Prescribed	S. 2 (10).
Previous year	S. 2 (11), P. 5.
Principal Officer	S. 2 (12), P. 6.
Public Servant	S. 2 (13), P. 8.
Registered firm	S. 2 (14), P. 9.
Total income	S. 2 (15), P. 10.
Unregistered firm	S. 2 (16), P. 9.

Demand , notice of	S. 29, R. 20, P. 74, 87.
prompt issue of	P. 87.

Depreciation. (See Allowances, Deductions from taxable income.)

aggregate allowances, not to exceed original cost	S. 10 (2) (vi), Prov. (c).
calculated on cost to assessee	P. 43.
claim to be supported by account	P. 43.
excess of — over profits may be carried forward	S. 10 (2) (vi), Prov. (b).
P. 43.	
rates of	R. 8.
to be allowed in full, when profits permit	P. 43.

Disclosure of information by public servant—

prosecution for	S. 54 (2), P. 91.
sanction to	S. 54 (2), Prov.

Discontinued business , assessment of	S. 25 (1), (2), (3), (4), P. 13, 71.
notice of discontinuance	S. 25 (2), P. 71.
penalty for failure to give notice	S. 25 (2).
appeal against penalty	S. 30 (1), P. 75.
recovery of tax	S. 44, P. 71.

Discontinued firm or partnership, liability of members

S. 44, P. 71.

Dismissal, Appeal by Assistant Commissioner or Income-tax Officer to Local Government against

P. 22.

District Board, included in “Local Authorities”

P. 7.

Dividend, certificate to be furnished to recipient by Principal Officer of Company

S. 20, P. 60, 88.

Dividend—contd.

Duplicates of certificates when accepted	P. 60.
form of certificate	R. 14, P. 60.
prosecution for failure to furnish	S. 51 (b).
income-tax on, not payable by shareholder	S. 14 (2) (a), P. 10.
refund of	S. 48 (1), R. 36-40, P. 88.
super-tax on, payable by shareholder	S. 55, P. 92.
tea-companies, 25 per cent. of, from, to be included in shareholders' total income	P. 2.

Dividing Society, assessment of P. 100.

Documents. (See Evidence.)

Double income-tax, relief in case of income taxed both in the United Kingdom and British India S. 49, P. 89.

Drawings, partners'. (See Deductions from taxable income.)

Education, scholarships granted to meet the cost of, exempt P. 16 (3), 17.

Electric tramways, rates of depreciation R. 8 (5).

Employers, return of employees to be furnished by prosecution for failure to furnish S. 21, R. 15-17, P. 61.
S. 51 (c).

Evidence, power of Commissioner, Assistant Commissioner and Income-tax Officer to summon persons and documents, issue commissions and take evidence on oath S. 37, P. 67, 84, Case No. 18.

power of Income-tax Officer to call on assessee to produce S. 22 (4), 23 (2), P. 66, 67, 84, Case No. 18.

failure to produce, forfeiture of right of appeal S. 23 (4), P. 67.

prosecution for failure S. 51 (d), P. 66.

Exchange, profits from dealings in — when liable Case No. 12.

Exemptions from income and super-tax—
agent in British India of Indian Prince or State, official allowance paid to P. 16 (1).

Exemptions from income and super tax—*contd.*

agricultural income	S. 4 (3) (viii), P. 2.
exemption not applicable to income from agriculture abroad	S. 2, (1) P. 2.
agricultural produce, raw, sale of, by culti- vator, etc., income from, exempt	P. 2.
allowance or perquisite, special	S. 4 (3) (vi).
allowance, Victoria Cross, Military Cross, Order of British India, Indian Order of Merit	P. 16 (5).
casual or non-recurring receipts	S. 4 (3) (vii), P. 21.
charitable or religious institutions, income from voluntary contributions	S. 4 (3) (ii), P. 17.
charitable or religious purpose, income derived from property held for	S. 4 (3) (i), P. 17.
exemption not applicable to income from business	Case No. 17.
Colonial Treasury, leave allowance or salary drawn from	P. 16 (19).
Colonial Treasury, pensions drawn from.	P. 16 (20).
Consuls, Representatives and Consular em- ployees, foreign, official salaries and fees of inapplicable to residents in India	P. 16 (1). P. 16.
Co-operative Societies, *profits of (but not interest on securities)	P. 16.
death or injuries, compensation for	S. 4 (3) (v).
deferred annuity*—sums deducted by Govern- ment from salary to provide	S. 7 (1), Prov., P. 10, 53.
included in total income	S. 16 (1), P. 10.
limit of one-sixth of salary	S. 7 (1), Prov.
Delhi Camp and Moving Allowance	P. 20.
District of Angul, persons, other than persons in the service of the Government, residing in the, income of	P. 16 (26).
dividend* received by shareholder, if company taxed	S. 14 (2) (a).
included in total income	S. 16 (1).
education, scholarship for	P. 16 (3), 17.
educational institution, income of, from fees, etc.	P. 16 (9).
Government of India securities, held by Indian Chiefs and Princes in special form, interest on	P. 16 (6).
Government of India securities, purchased through Post Office, interest on	P. 16.
included in total income	P. 16.

* Not exempt from super-tax.

Exemptions⁷ from income and super-tax—*contd.*

Government of India Securities,* tax-free, interest on	S. 8, Prov., 18 (1).
included in total income	S. 16 (1), P. 10.
Governor-General may exempt income or reduce the rate	S. 60.
gratuities granted to Royal Engineer Officers of the Survey or Railway Departments and Indian Army Officers of the Survey Depart- ment	P. 16 (14).
gratuities granted to surplus Military Assistant Surgeons	P. 16 (15).
gratuities paid from Railway Provident Fund	P. 16 (16), 18.
gratuities, wound or injury—	
granted to officers and others	P. 16 (11).
granted to widows, children, etc., of officers and others	P. 16 (12).
Hindu Undivided Family, share of income of, not included in total income of member . .	S. 14 (1), P. 10, 51.
not liable to super-tax	S. 58, 14 (1), P. 51.
Indian Prince or State, agent of, official allow- ance paid to, in British India	P. 16 (1).
Indian State, salary and allowance of officers deputed by, for training in British India . .	P. 16 (2).
injuries, compensation for	S. 4 (3) (v), P. 16.
injury gratuities. (See gratuities, wound, above.)	
insurance policy, sum paid in commutation of	S. 4 (3) (v).
insurance premia, fire	S. 9 (1) (iii), 10 (2) (iv), P. 31, 42.
insurance premia,* life	S. 15 (1), (2), P. 10, 53.
abatement may be allowed by persons or officers paying salaries	P. 53, 57.
abatement may be allowed if claimed within six months	P. 53.
included in total income	S. 16 (1), P. 10
limit of one-sixth of total income	S. 15 (3).
invalid pensions. (See pensions below.)	
leave allowance or salary of Government officer paid in United Kingdom or Colonies	P. 16 (18), (19).
Light house keepers in the Rea Sea, salaries of	P. 16 (21).
local authority, income of	S. 4 (3) (iii).
Mysore Durbar bonds, 1920-1921	P. 16 (22).
pension, sum paid in commutation of	S. 4 (3) (v).
pensions, drawn in Colonies or United King- dom	P. 16 (20).

* Not exempt from super-tax.

Exemption from income and super-tax—concl'd.

pensions, Military, naval or air forces, invalid or wound	P. 16 (23), (24).
Perquisites—free residences—High Officials	P. 16 (27).
Post Office cash certificates, yield of	P. 16 (7).
Post Office, Government securities purchased through; interest on	P. 16.
included in total income	P. 16.
Post Office Savings Bank, interest on deposits.	P. 16 (8).
Power of Governor-General to exempt income or reduce rate	S. 60.
Provident Fund, accumulated balance of	S. 4 (3) (v), P. 18.
Provident Fund, contribution to*	S. 15 (1).
included in total income	S. 16 (1), P. 10.
limit of one-sixth of total income	S. 15 (3).
Provident Fund, Railway, gratuity paid from	P. 16 (16), 18.
Provident Fund, interest on securities of	S. 4 (3) (iv), P. 18.
Railway Provident Fund. (See Provident Fund, Railway, above.)	
Regimental Mess or Bank Fund, compulsory payment to	P. 16 (4).
Ruling Chiefs and Princes, interest on Government securities, held by, in special form	P. 16 (6).
scholarships for education	P. 16 (3), 17.
Simla House Rent Allowance	P. 20.
Trade Commissioners in India, salary of	P. 16 (10).
United Kingdom, leave allowance, salary or pensions paid in	P. 16 (19).
University, income of, from fees, etc.	P. 16 (9).
value of rations issued in kind or money allowances paid in lieu thereof, to Military officers	P. 16 (25).
wound, gratuities, pensions. (See gratuities, pensions, above.)	
Exchange, conversion of profits of sterling companies	P. 47.
Extent of Act	S. 1 (2), P. 1.
False return by assessee, consequence of (see Penalty, Prosecution)	P. 65.
False statement in declaration, etc., penal offence	S. 52, P. 65.
Fees, income of University or educational institution from, exempt	P. 16 (9).
Professional, paid in India to person ordinarily resident in British India, chargeable	S. 11 (3), P. 14.
"Salaries" includes	S. 7 (1).

* Not exempt from super-tax.

Fiduciaries, liability of	S. 40, 41, P. 82.
indemnification of	S. 65.
Fire Insurance Company, assessment of	R. 28, 29, 32, P. 100.
premium deduction when allowed	S. 9 (1) (iii), 10 (2) (iv), P. 31, 42.
Firm, change in constitution, liability to tax for	
previous year attaches to Firm	S. 26, P. 71, 72.
discontinuance of, assessment	S. 25, P. 71.
liability of partners for tax	S. 44, P. 71.
notices, how served on	S. 63 (2), P. 97.
partners in (registered or unregistered), proportionate share of profits included in individual total income for income-tax	S. 14 (2)(b), 16 (1), P. 52.
tax payable by, on share, only if firm not taxed	S. 14 (2) (b), P. 9 (2).
registration of	R. 2-6, P. 9.
Firm registered, definition	S. 2 (14), P. 9.
application for registration when to be made	Case No. 11.
assessment of, to income-tax	P. 52.
assessment to be made, so far as possible, on partners	P. 52.
partner entitled to refund on his share, when individual in- come not taxable at maxi- mum rate	S. 48, (2) P. 9 (1), 52, 69, 88.
partner entitled to set off share of loss against individual income	S. 24 (2), P. 69.
partner in more than one regis- tered firm may be allowed to set off loss in one against profits from another	P. 69.
rate of tax applicable, maximum taxable minimum, not appli- cable	Fin. Act, P. 9 (1). Fin. Act. P. 9 (1).
assessment of, to super-tax (not liable, partners liable)	S. 55, P. 9 (1), 92.
non-resident partners, liability of joint partners, for tax on share of	S. 57 (1), P. 93.
such liability limited to tax on such share	P. 89.
change in constitution—total in- come of members—how calculated	S. 56 (Prov.).
registration of	R. 2-6, P. 9.

Firm, unregistered, definition of	S. 2 (16), P. 9.
assessment of, to income-tax	P. 51.
partner, share of loss cannot be set off against individual income	S. 24 (2), P. 69.
rate of tax applicable same as in case of individual	Fin. Act. P. 9 (1).
taxable minimum, applicable	Fin. Act. P. 9 (1).
assessment of, to super-tax—	
liable to super-tax	S. 55, P. 9 (2).
partner not liable if firm taxed	S. 55 Prov., P. 9 (2).

Floatation expenses. (See shares, cost of issuing.)

Foreign associations, may be declared companies . S. 2 (6), P. 4.

Foreign business. (See Business abroad.)

Foreign Consuls. (See Exemptions.)

Foreign debentures, interest on, when liable . . . P. 15.

Foreign income. (See Non-residents.)

agriculture, income from, not exempt	S. 2 (1), P. 2.
business-income, when deemed to be received in British India	S. 4 (2), P. 14.
interest on loans advanced in Indian States to persons resident in British India—when not liable	P. 14.
interest on sterling debentures or foreign securities, when liable	P. 15.
not assessable unless received in British India	Case No. 4.
owner or charterer of a ship residing out of British India—liability of	S. 44A to 44C.
professional fees paid outside British India to person residing in British India, liable	S. 11 (3), P. 14.
salaries paid outside British India, when liable	S. 7 (2), P. 1, 14, 24.

Forest, income from — when not liable . . . P. 2.

Forms—

Appeal to Assistant Commissioner against assessment	R. 21.
---	--------

Forms—contd.

Appeal to Commissioner against enhancement	R. 22.
Application for depreciation allowance	R. 9.
Application for refund of tax by shareholder, member of registered firm, or owner of securities	R. 36.
Application for registration of firm	R. 3.
Assessment form	R. 20.
Certificate of deduction of tax on interest on securities, furnished by Banker	P. 59.
Certificate of deduction of tax on interest on securities, furnished by Officer paying in- terest	R. 13, P. 60.
Certificate of Income-tax Officer authorising non-deduction of tax on interest on secu- rities	P. 59.
Certificate of payment of tax on profits of a company	R. 14, P. 60.
Certificate of registration of firms	R. 4 (1).
Demand notice	R. 20.
Depreciation allowance. (see Application, above.)	
Return of employees	R. 17, P. 61.
Return of income of Company	R. 18, P. 62.
Return of income of individual, firm or Hindu Undivided Family	R. 19, P. 63.
Statement of interest deducted from securities	R. 12.
Statement of property	R. 19.
 Free quarters, value of, when taxable	 P. 20.
 Frontier Agency tracts, included in expression “Dominions of Princes and Chiefs in India”.	 P. 1.
 Furniture, depreciation allowance on	 S. 10 (2) (vi), R. 8—9, P. 43.
replacements may be allowed instead of	P. 43.
insurance of, allowance for	S. 10 (2) (iv), P. 42
repairs to, allowance for	S. 10 (2) (v).
 Gazette of India, notification in, of appointments of Commissioner, Assistant Com- missioner or Income-tax Officer by Central Board of Revenue	 S. 5 (5).
notification in, of exemptions, etc.	S. 60.
notification in, of rules	S. 59 (3), (4).

- Government loan, premium on redemption of —**
 not liable P. 21, Illustration (4).
- Government, Local** (see Local Government).
- Government office, return of employees** S. 21, R. 15, 17, P. 61.
- Government officer, indemnification of, for acts**
 done in good faith S. 67.
- Government officers lent to and paid by Indian States—**
 Salaries when liable P. 24.
 Leave allowances and pensions liable P. 24.
- Government officers, serving outside British India,**
 when liable to tax S. 1 (2), 7 (2), P. 1, 24.
- Government officers, serving outside India, when**
 liable to tax P. 25.
- Government of India Promissory notes, enfaced**
 for payment in England, interest on, liable
 to tax P. 15.
- Government of India Securities,—**
 income-tax pay-
 able on interest
 on, unless issued
 or declared tax-
 free S. 8, P. 26.
 interest on, exempt
 from income-
 tax and super-
 tax in certain
 cases . . . (See Exemptions.)
 interest on, super-
 tax payable on,
 including those
 free of income-
 tax. . . . S. 8, Prov., 58 (1).
- Government of India Sterling Securities, interest**
 on, when liable P. 15.
- Governor-General, appoints Central Board of**
 Revenue P. 22 (1).
 appoints Commissioners, sub-
 ject to consideration of re-
 commendation of local Gov-
 ernment S. 5 (3).

Governor-General—*contd.*

- appointments of Assistant Commissioners and Income-tax Officers by Commissioner subject to control of . . . S. 5 (4).
 - exercised through Local Government . . . P. 22 (2).
 - power to declare income exempt from tax, reduce rate of tax, etc. . . . S. 60.
 - rule-making power of Central Board of Revenue subject to control of . . . S. 59 (1).
- Gratuity**, for services rendered not exempt . . . P. 21.
- included in term "Salaries" . . . S. 7 (1).
- Gratuities.** (See Exemptions.)
- Ground-rent.** (See Allowances.)
- Guardian**, duly appointed or recognised—
 - pension of minor orphans paid to. (See pensions of minor orphan.).
 - liability of, on behalf of wards . . . S. 40, 41, P. 82.
 - indemnification of . . . S. 65.
 - may be called on to furnish list of wards . . . S. 38.
- Heads of income chargeable** . . . S. 6.
- High Court**, statement of case on point of law to,
 - by Commissioner . . . S. 66 (1), P. 99.
 - statement of case on point of law to, by Commissioner on application by assessee . . . S. 66 (2), P. 99.
 - assessee must have exhausted appellate powers . . . S. 66 (2), P. 99.
 - Commissioner cannot withhold unless no point of law involved . . . S. 66 (2) (3), P. 99.
 - cost to be borne by assessee . . . S. 66 (6).
 - fee to accompany application . . . S. 66 (2), P. 99.
 - interest may be allowed by Commissioner on amount refunded . . . S. 66 (7), Prov.
 - payment of tax not to be postponed pending . . . S. 66 (7), P. 87, 99.
 - power of Central Board of Revenue to prescribe fee . . . S. 66 (2), P. 99.
 - reference by High Court to Commissioner . . . S. 66 (4), P. 99.

High Court—*contd.*

refusal of Commissioner to state a case, powers of High Court	S. 66 (3), P. 99.
withdrawal of application by assessee	S. 66 (2), Prov., P. 99.
refund of fee	S. 66 (2), Prov., P. 99.

High Court Rulings—

Application under Sections 66 (2) and 66 (3)—	
Question of law to be specified in	Case No. 21.
Bhikanpur Sugar Concern	Case No. 2.
Business—casual gains from—meaning and examples of	Cases Nos. 22 & 24.
Cesses levied under the Bihar and Orissa Mining Settlements Act, 1920, and Jharia Water Supply Act, 1914—admissible as business expense	Case No. 13.
Charitable or religious purpose, income from, liable before the property was settled	Case No. 10.
Chunilal Kalyandass of Agra	Cases Nos. 22 & 23.
Contracts, wagering—Profits from—taxable	Case No. 23.
Evidence—Section 37—power to call for—not restricted to that produced by assessee	Case No. 18.
Exchange—Profits arising from dealings in—	Case No. 12.
Foreign income not liable unless received into British India	Case No. 4.
Haji Jamel Nur Mahomed & Co., (Messrs.), Payments to Mudibhagidars	Case No. 19.
Illegal fees exacted from tenants	Case No. 1.
Incomes coming within the scope of section 34	Case No. 9.
Income-tax Officer—Principal place of business—powers at	Case No. 25.
Interest guaranteed by the Secretary of State and payable in England	Case No. 8.
Isher Das, Dharm Chand—Punjab	Case No. 21.
Killing Valley Tea Company	Case No. 3.
Lachhmandass Baburam of Cawnpore	Case No. 25.
Lachman Dass, Narain Dass of Cawnpore	Case No. 17.
Lalla Mal Hardeo Dass Cotton Spinning Mill Company of Hathras	Case No. 11.
Local rate or tax independent of profits—admissible deduction	Case No. 16.
Mining rents and royalties	Case No. 6.
Nedungadi Bank, Ltd., Calicut	Case No. 16.
Non-residents, business connection in British India	Cases Nos. 5 & 14.
Non-residents, computation of income income-tax and excess profits duty paid in England, not a permissible deduction	Case No. 7.

High Court Rulings—contd.

Partner's salaries—inadmissible deduction . . .	Case No. 15.
Premia for settlement of waste land . . .	Case No. 1.
Profits of business set apart for charitable purposes— not exempt . . .	Case No. 17.
Purshottamdas Thakardas, Sir . . .	Case No. 24.
'Receive'—Meaning of . . .	Case No. 20.
Rogers Pyatt Shellac Company . . .	Case No. 14.
Sundar Das—Rai Bahadur—Punjab . . .	Case No. 20.
Sugar, manufacture and sale of . . .	Case No. 2.
Tea, manufacture and sale of . . .	Case No. 3.
Vagaraju Venkatasubhayya of B. S. Mining Company . . .	Case No. 15.

Hindu Undivided Family , assessment of, to income tax and super-tax . . .	S. 14 (1), 55, P. 10, 51, 92.
life insurance premia on life of male member or his wife, exempt, for income-tax . . .	S. 15 (2), P. 53.
not exempt for super-tax . . .	S. 15 (2), 58, (1).
members or, not taxable on individual share . . .	S. 14 (1), 58 (1), P. 10, 51.
share not included in total income . . .	S. 14 (1), 16 (1), 58, (1), P. 10, 51.
notices to, how addressed . . .	S. 63 (2), P. 97.
"person" includes . . .	S. 2 (9).

House property (see Property).

income from dealings in, when taxable . . .	P. 21.
---	--------

House rent allowances , when liable to tax . . .	P. 20.
---	--------

Idiot , liability of guardian or trustee . . .	S. 40, 41, P. 82.
indemnification of guardian . . .	S. 65.

Illegal fees , exacted from tenants . . .	Case No. 1.
--	-------------

Income , agricultural, exempt . . .	S. 4 (3) (viii), P. 2.
definition of . . .	S. 2 (1), P. 2.
exemption not applicable to income from agriculture abroad . . .	S. 2 (1), P. 2.
agriculture, — partly derived from, assessment of . . .	R. 23, 24, P. 2, Cases Nos. 2 & 3.

Income —contd.

calculation of, fractions of rupee disregarded	P. 81.
concealment of, penalty for	S. 28 (1).
escaping assessment, method of assessing	S. 34, P. 79.
rate applicable	S. 34, Prov., P. 79.
foreign, when taxable	S. 4 (2), 7 (2), 11 (3), 42, P. 14.

(See Business abroad—

Non-residents)

heads of, chargeable	S. 6, P. 12.
return of ——. (See Return of income.)	
return of—	
by company	S. 22 (1), R. 18, P. 62.
by individual, firm or Hindu Undivided family	S. 22 (2), R. 19, P. 63.
total. (See Total Income.)	

Income-tax , calculation of, to nearest anna	S. 36, P. 81.
Commissioner of. (See Commissioner of Income-tax.)	
computation of, income-tax and excess profits duty paid in United Kingdom not a permissible deduction	P. 49, Case No. 7.
deduction of. (See Deduction of Income-tax.)	
direct levy of	S. 19, P. 56.
double, relief in case of income taxed both in the United Kingdom and in India	S. 49, P. 89.

Income-tax Officer , appointment of, by Central Board of Revenue	S. 5 (5).
appointment of, by Commissioner (to whom subordinate)	S. 5 (4), P. 22 (4).
appointment of, notification of, in Gazette of India	S. 5 (5).
appointment of, subject to control of Governor-General, exercised through Local Government	S. 5 (4), P. 22 (2).
definition of	S. 2 (7).
dismissal of, appeal to Local Government	P. 22.
Increment of pay—appeal to Local Government—against order withholding—	P. 22.
powers of — at principal place of business	Case No. 25.

Income-tax Officer—*contd.*

power to allow change of previous year "on conditions".	S. 2 (11) (a), Prov., P. 5.
power to assess resident on profits of non-resident in certain cases	S. 42 (2), R. 33.
power to call on assessee to produce accounts or documents	S. 22 (4), P. 66, 84.
limitation of power	S. 22 (4), Prov.
power to call on assessee to produce evidence	S. 22 (4), 23 (2), P. 67.
power to call for return of members of firm or Hindu Undivided family	S. 38 (1).
power to call for return of names of beneficiaries	S. 38 (2).
power to cancel assessment when sufficient cause shown	S. 27, P. 64.
power to declare agent of non-resident, after notice	S. 43.
power to declare principal officer of company, etc., after notice	S. 2 (12), P. 6.
power to determine basis for computation of income	S. 13, Prov., P. 36.
appeal against decision	P. 35.
power to enquire about profits of branch business	S. 64 (4), P. 22 (4).
power to extend time for return of income by Company	S. 22 (1), Prov.
power to impose penalty for concealment of income	S. 28 (1), P. 65.
assessee to be heard	S. 28 (1), Prov.
power to impose penalty for default in payment	S. 46 (1), P. 87.
power to inspect register of debenture holders	S. 39, P. 67.
power to inspect share register of Company	S. 39, P. 67.
power to issue certificate authorising non-deduction of tax on interest on securities, or deduction at lower rate	P. 58.
power to issue certificate of arrears to Collector for recovery	S. 46 (2), P. 87.
power to make fresh assessment when sufficient cause shown	S. 27, P. 64.

Income-tax Officer—concl'd.

appeal against refusal to make fresh assessment	S. 30 (1), P. 75.
power to rectify mistakes	S. 35 (1), P. 80.
power to require deduction of arrears of tax from salary	S. 46 (5), P. 87.
power to summon persons and documents, issue commissions and take evidence on oath	S. 37, P. 67, 84, Case No. 18.
powers of, to be exercised by Assistant Commissioner when so directed by Commissioner	S. 5 (4), P. 22.
proceedings before, are judicial proceedings	S. 37.
review, Income-tax officer has no general power of	S. 35, P. 80.

Income-tax records, Civil Court not to summon S. 54 (1), P. 91.

Increase of assessment on appeal. (See Assessment, enhancement of.)

Indemnification of Government officers for acts done in good faith S. 67.
of persons deducting, retaining or paying tax in respect of income belonging to another S. 65.

Indemnity, contract of — loss recoverable under, inadmissible P. 37.

Indian Income-tax, meaning of the expression S. 49 (2)(a).
rate of tax, meaning of the expression S. 49 (2) (b).

Indian Order of Merit, allowance attached to, exempt P. 16 (5).

Indian Princes Agents of, official allowance paid to, in British India, exempt P. 16 (1).
Government securities held by, in special form, interest on, exempt P. 16 (6).

Indian States, Agents of, official allowance paid to, in British India, exempt P. 16 (1).

Indian States—*contd.*

British subject in, application of Act to	S. 7 (2).
Government servants in, application of the Act to	S. 1 (2), 7 (2), P. 1, 24.
interest on loans advanced in, to persons resident in British India, when not liable	P. 14.
officers deputed by, for training in British India, salary and allowances of, exempt	P. 16 (2).
salaries, leave allowances and pensions of officers lent to, and paid by, when liable	P. 24.

Information , disclosure of, by public servants, prosecution for	S. 54 (1), (2), P. 91.
power of Commissioner to sanction	S. 54 (1).
disclosure of, to local authorities forbidden	P. 91.

Injury , compensation for, not liable	S. 4 (3) (v).
gratuity, exempted. (See Exemptions.)	
pensions in respect of, granted to naval, military or air forces, exempt	P. 16 (23).

Insurance , against loss of profit, premium, when an admissible deduction	P. 42.
against loss of rent, premium, when an admissible deduction	P. 31.
Company, non-resident, assessment of	R. 35, P. 84, 100.
policy, loss recoverable under, inadmissible	P. 37.
sum paid in commutation of, exempt	S. 4 (3) (v).
premia. (See allowances and exemptions.)	
premia, abatement on, may be allowed if claimed within six months	P. 53.
premia payable in sterling, rate of conversion for purposes of abatement	P. 53.
premia, private employer may give abatement for	P. 53, 57.
Society, Provident, interest on securities of, when exempt	S. 4 (3) (iv), P. 18.

Insurance Company , assessment of	S. 59 (2) (a) (ii), P. 100,
power of Central Board of Re-	R. 25—32, 35.
venue to make rules for	S. 59 (2) (a) (ii).
Interest on arrear of rent of land, when liable	P. 2.
on borrowed capital, allowed in assessing business	S. 10 (2) (iii), P. 41.
on deposits in Post Office Savings Bank exempt	P. 16 (8).
on foreign debentures, when liable	P. 15.
on Government securities, held by Indian Chiefs and Princes in special form, exempt	P. 16 (6).
on Government securities purchased through Post Office, exempt	P. 16.
included in total income	P. 16.
on Government of India Promissory Notes enfaced for payment in England, liable	P. 15.
on Government of India Securities, exemption from income-tax in certain cases. (See Exemptions.)	
on Government of India Securities, income-tax payable on, unless issued or declared tax-free	S. 8. Prov. (1), P. 26.
on Government of India Securities, super-tax payable on, including those free of income-tax	S. 8, 58 (1), P. 26.
on Government of India Sterling Securities, when liable	P. 15.
on mortgages, allowed in assessing property	S. 9 (1) (iii), P. 30.
on partner's capital, when an admissible deduction	P. 41.
on refund of amount deposited by applicant for statement of case to High Court, may be allowed by Commissioner	S. 66 (2), P. 99.
on securities, certificate of deduction of tax furnished by Banker	P. 58.
on securities, certificate of deduction of tax furnished by officer paying interest	S. 18 (9), R. 13, P. 58.
on securities, certificate of Income-tax Officer authorising non-deduction of tax	P. 58.
on securities, deduction of income-tax at source, from. (See Deduction of income-tax.)	
on securities held by Co-operative Societies, assessable	P. 16.

Interest—concl'd.

on securities, income-tax on, when payable direct	S. 19, P. 56.
on securities issued tax free by Local Government, tax payable by Local Government	S. 8, Prov. (2), P. 26. P. 19, R. 19, Note 2.
on securities, meaning of	P. 19, R. 19, Note 2.
on securities of provident fund or Provident Insurance Society	S. 4 (3) (iv), P. 18.
on tax-free securities, taken into account in determining the total income of assessee	S. 8, Prov., 16 (1), P. 10.
on tax-free securities, of Local Government, tax on, paid by Local Government	S. 8, Prov. (2), P. 26.

Invalid pensions, military, naval or air forces, exempt P. 16 (23), (24).

Investment Reserve Fund, of Insurance Company, treatment of amounts credited to R. 30, P. 100.

Irrecoverable loan, when a permissible deduction P. 38.
(See bad debts.)

Jagirdar—Assignment of land revenue to—not assessable P. 2.

Judicial proceedings, proceedings before Commissioner, Assistant Commissioner and Income-tax Officer are S. 37.

Land Revenue—

Assignment of — to Jagirdar not assessable	P. 2.
on business premises, permissible deduction	S. 10 (2) (viii), P. 45, 50.

Leave allowances, paid in United Kingdom, when liable. (See exemptions) P. 25.

Legacies, lump sums exempt P. 21, Illustration (6).

Legal charges, when inadmissible in assessing property P. 29.

Life Insurance Companies (see Insurance Companies, Insurance Society, Provident).

Life Insurance Premia (see Insurance Premia).	
exemption of	S. 15 (1), 58, P. 10, 53.
claim to, evidence required	P. 53.
procedure when receipts produced subsequently	P. 53.
deduction may be made by person paying salary (or claimed in assessee's return)	P. 53.
exemption in case of Hindu Undivided Family	S. 15 (2), P. 53.
included in total income for income-tax	S. 15 (1), (2), 16 (1), P. 10.
limit of 1-6th of total income	S. 15 (3), P. 10.
responsibility of officer deducting tax at the source	P. 53.
super-tax, not exempt from	S. 15 (1), 58, P. 53.
Limitation on proceedings to recover tax	S. 46 (7), P. 87.
inapplicable in case of non-resident	S. 42 (1). Prov., P. 87.
Loans—irrecoverable. (See Bad debts.)	
Local Authority , established by Governor-General in Council, income paid by, to British subject or servant of His Majesty in any part of India, liable	S. 7 (2), P. 1, 14, 24.
return of employees by	S. 21. R. 17, P. 61.
failure to furnish, prosecution for	S. 51 (c).
Assistant Commissioner's sanction required	S. 53 (1).
Local Authorities , definition of	P. 7.
income of, exempt	S. 4 (3) (iii).
information regarding assessments not to be furnished to	P. 91.
Local Government , agency rules regulating control of, over income-tax matters	P. 22 (2).
appeal to, by Assistant Commissioner or Income-tax Officer, against order of dismissal	P. 22.
may direct that income-tax should be recovered with municipal tax or local rate, etc.	S. 46 (6).

Local Government—*contd.*

- recommendation of, to be considered in appointing Commissioner S. 5 (3).
- security issued tax-free by, interest on, income-tax payable by Local Government S. 8, Prov. (2).
- Local rates, deduction inadmissible in assessing property** S. 9 (1) (v), P. 29, 50.
- on business premises, deduction permissible S. 10 (2) (viii), P. 45, 50.
- Loss of profit, insurance against premia when an admissible deduction** P. 42.
- Loss of rent, insurance against, premia when an admissible deduction** P. 31.
- Loss recoverable under insurance, inadmissible** P. 37.
- Loss, set-off of, under one head of income against another head** S. 24 (1), P. 69
- in case of registered firm S. 24 (2), P. 69.
- loss under property inadmissible P. 34.
- where assessee is partner in more registered firms than one P. 69.
- Losses, previous years', deduction inadmissible** P. 37.
- Lottery, prize in, not taxable** P. 21, Illustration (2).
- Lunatic, liability of Guardian or trustee** S. 40, 41, P. 82.
- indemnification of guardian S. 65.
- Machinery and Plant.** (See Depreciation.)
- Magistrate, defined** S. 2 (8).
- Manager.** (See Fiduciaries.)
- Marginal relief** S. 17, P. 55.
- how to be calculated in conjunction with deductions allowed under Section 16 P. 55.
- Marine Insurance.** (See Insurance Companies.)
- Married women, separately assessable** P. 96.

- Medical relief, included in "Charitable purpose" . S. 4 (3) ad fin
- Mercantile basis of accountancy P. 12, 35.
- Military Cross, allowance attached to, exempt . P. 16 (5).
- Military forces, wound or injury pensions. (See Exemptions.)
- Minors, liability of guardians for S. 40, 41, P. 8
 , indemnification of guardians S. 65.
- Money-lending business, irrecoverable loan, admissible deduction . . . P. 38.
- Motor insurance. (See Insurance Companies.)
- Mudibhagidars—payments to. (See Deductions from taxable income inadmissible—partners' capital, interest on.)
- Municipalities, included in "Local authorities" . P. 7.
- Municipal taxes, deduction inadmissible in assessing property S. 9 (1) (v), P. 29, 50.
 on business premises, deduction admissible in assessing business S. 10 (2) (viii), P. 45, 50.
- Mutual benefit Societies, subscriptions to, when treated as borrowed capital S. 10 (2) (iii), Explanation, P. 41.
- Mysore Durbar. (See Exemptions.)
- Naval forces, wound or injury pensions. (See Exemptions.)
- New businesses, assessment of P. 70.
- Non-residents, agent of, assessable S. 42, 43, P. 83, 84.
 application of Act to, British subjects and persons in service of Government or local authority in dominions of Princes and Chiefs in India S. 1 (2), 7 (2), F. 1, 24,
 arrears when recoverable from assets of S. 42 (1), Prov., P. 87,
 no limitation on recovery . . . P. 87.

Non-residents—*contd.*

business connection in British India, assessment of profits and gains of non-residents from	S. 42 (1), (2), R. 33, 34, P. 14, 83, 84, Case No- 14.
casual agents of non-residents	P. 84 (4).
consignment businesses	P. 84 (3).
dividing societies, income how cal- culated	R. 31.
income accruing or arising or deem- ed to accrue or arise in British India to, taxable	S. 4 (1), P. 14, Cases Nos. 5, 14.
income of, other than income from business	P. 83.
Indian agents of non-resident firms	P. 84 (3), (4).
Indian branches of non-resident firms	P. 84 (1), R. 33.
Indian firms allied to non-resident firms	P. 84 (2).
insurance companies, Indian branch- es of	R. 35, P. 84, (1), 100.
interest on loans advanced in Indian states to persons resident in British India, when not liable	P. 14.
powers of Central Board of Revenue to make rules regarding assessment of	S. 59 (2) (a) (iii).
profits from business connexion, when deemed to arise in British India	S. 42 (1), R. 33, P. 14, 84.
salaries of British subjects or ser- vants of His Majesty paid in India but outside British India, when chargeable	S. 7 (2), P. 1, 14, 24.
shipping companies, Indian branches of	R. 33, P. 84 (1).
shipping, occasional—	
Liability to tax of	S. 44(a).
owner or charterer when to be deemed to carry on business in British India	P. 86.
port clearance not to be granted until tax paid	S. 44-B.
profits and gains how to be determined	S. 44-B.

Non-residents—concl'd.

- super-tax, non-resident partner of registered firm, liability of resident partners. S. 57 (1), P. 93.
- shareholder, resident abroad, liability of principal officer of company to deduct super-tax from dividends due to S. 57 (2), P. 93.
- tax paid for non-resident, credit to be given for, in assessing agent S. 57 (3), P. 93.
- taxes paid in other countries, inadmissible deduction P. 49, Case No. 7.
- Notice of demand S. 29, R. 20, P. 74.
- Notices, service of S. 63, P. 97.
- Obsolescence. (See Allowances.)
- Offences (see Prosecution) .
 - power of Assistant Commissioner to compound S. 53 (2), P. 54, 90.
- Officer(s) [see Government Officer(s)].
- Official trustee, liability of, for tax S. 41, P. 82.
 - indemnification of S. 65.
- Order of British India, allowance attached to, exempt P. 16 (5).
- Orphan, minor—Pension of. (See Pensions of minor orphan.)
- Other sources (see Allowances, Deductions from taxable income, Exemptions).
 - assessment of income from S. 12 (1), P. 27.
 - examination fees included under P. 23.
 - income of lessee from lease-hold property, assessable under P. 27.
 - language rewards included under P. 23.
 - vacant lands, rentals of, taxable under P. 27.
 - owner or charterer of a ship residing out of British India, liability of S. 44-A to 44-C.
- “Paid” meaning of S. 10 (3), P. 35.
- Partners (see Allowances, Deductions from taxable income, Firms).
- Penalty (see Prosecution).

Penalty for concealment of income	S. 28 (1), P. 65.
notice to assessee before imposition	S. 28 (1), Prov. (1).
prosecution on same facts, barred	S. 28 (1), Prov. (2), P. 65.
Penalty for default, Income-tax officer may impose	S. 46 (2), P. 87.
recovery of	S. 47, P. 87.
Penalty for failure to deduct tax, personal liability	S. 18 (7), P. 56.
Pension, included in "salaries"	S. 7 (1), P. 23.
Pensions (see "Allowances," "Deductions from taxable income," "Exemptions").	
Pensions of minor orphan, paid to his mother or guardian not to be included in the taxable income of the mother or guardian	P. 96.
Pensions of officers lent to Indian States, liable	P. 24.
Pensions paid in United Kingdom, when liable	P. 25 (See Exemptions).
Perquisites, included in "salaries"	S. 7 (1), P. 23.
or benefits, not convertible into money, when exempt	P. 20.
special, for specific purpose, when exempt	S. 4 (3) (vi), P. 20.
"Person" defined	P. 3.
Person, includes Hindu Undivided Family	S. 2 (9).
Personal expenses, deduction inadmissible	P. 37.
Place of assessment	S. 64 (1), (2), (3), P. 98.
Plant (see "Depreciation," "repairs" under "Allowances in assessing business").	
Plant, includes shafts, sidings and tramways in coal mines	P. 43.
Poor, relief of, included in "charitable purposes"	S. 4 (3) ad fin.
"Post" means "Registered post"	P. 97.
Post-notices may be served by	P. 97.
Post Office, Cash Certificates (see Exemptions).	
Government securities purchased through (see Exemptions).	
Savings Bank (see Exemptions).	

Postponement of collection (see Recovery of tax).

Premium for settlement of waste lands, etc., not
liable Case No. 1, P. 2.

for transfer of holdings, liable Case No. 1, P. 2.

insurance (see Allowances, Exemptions,
Insurance).

on issue of shares, not liable P. 48.

on redemption of Government loan not
taxable P. 21, Illustration (4).

“Prescribed,” meaning of S. 2 (10).

Presents, Expenditure on, inadmissible as a deduc-
tion P. 37.

“Previous publication,” meaning of P. 94.

Previous year,” defined S. 2 (11), P. 5.

assessee’s option in regard to S. 2 (11) (a), P. 5.

restriction on S. 2 (11) (a), Prov. P. 5.

power of Central Board of Re-
venue to declare S. 2 (11) (b), P. 5.

delegation of power to Com-
missioners. P. 5.

extent of delegation P. 5.

power of Income-tax Officer in
regard to change of S. 2 (11) (a), Prov. P. 5.

Principal Officer ” of company, etc., defined S. 2 (12), P. 6.

certificate of payment of tax
on profits to be furnished
by S. 20, R. 14, P. 60, 88.

prosecution for failure to
furnish S. 51 (b).

return of employees by S. 21, R. 15, P. 61.

prosecution for failure to
furnish S. 51 (c).

return of income by S. 22 (1), R. 18, P. 62.

failure to furnish, prosecu-
tion for S. 51 (c), P. 62, 64.

forfeiture of right of
appeal S. 30 (1), Prov., P. 64.

power of Income-tax Offi-
cer to extend time for S. 22 (1), Prov.

Principal place of business, determination of S. 64 (1), (2), (3), P. 98.

Powers of Income-tax Officer at Case No. 25.

Private employer, deduction of tax by, from salaries	S. 18 (2), P. 23, 57.
Professional earnings, assessment of	S. 11 (1), P. 35.
expenditure allowable	S. 11 (2), P. 50.
personal expenditure, not allowable	S. 11 (2).
Professional fees, paid outside British India, when liable	S. 11 (3), P. 14.
Profits, book, when included in income	P. 35.
Promissory Notes, Government of India, enfaced for payment in England, interest on, liable	P. 15.
Property, assessment of (see Allowances in assessing property)	S. 9 (1).
no set-off of loss under, allowed	S. 9 (1), Prov., P. 34.
Property, annual value defined	S. 9 (2), P. 28.
differs from actual rent	P. 28.
limit of 10 per cent. of "Total income"	S. 9 (2), P. 28.
"total income" defined	P. 28.
business premises, not included in	P. 27.
collection charges, maximum	S. 9 (1) (vi), R. 7, P. 32.
reduction in case of vacancies	S. 9 (1) (vii), P. 33.
evidence required to support claim for allowances	P. 30, 32.
lands not attached to buildings, not included under	P. 27.
lease-hold property, lessee's income from, chargeable under "other sources"	P. 27.
loss of rent, insurance premia, when allowed	P. 31.
vacancies, allowance for	S. 9 (1) (vi), P. 33.
claims only admissible in respect of property usually let	P. 33.
vacant lands, rent of, taxable under "other sources"	P. 27.
Proprietors (see references to Partners under "Allowances," Deductions from taxable income, inadmissible, "Firms").	
Prosecution for disclosure of information by public servant	S. 54 (2), P. 8, 91.
Commissioner's sanction required	S. 54 (2), Prov.
exceptions	S. 54 (2), Prov.

Prosecution—*contd.*

for failure to deduct tax or arrears of tax	S. 51 (a).
for failure to furnish certificate of deduction of tax from salaries or interest	S. 51 (b).
for failure to furnish certificate of payment of tax on the profits of company	S. 51 (b).
for failure to grant inspection of register of members of company, etc.	S. 51 (e).
for failure to make return of employees	S. 51 (c).
for failure to make return of income	S. 51 (c), P. 64.
for failure to make return of members of firm or Hindu Undivided Family	S. 51 (c).
for failure to make return of names and addresses of beneficiaries	S. 51 (c).
for failure to produce accounts or documents	S. 51 (d), P. 66.
for false statement	S. 52, P. 65, 75.
Assistant Commissioner to direct prosecutions as above (S. 51 and 52)	S. 53 (1), P. 65, 90.
stay of, by Assistant Commissioner.	S. 53 (2), P. 90.

Provident Funds (see Exemptions).

application of exemptions	S. 4 (3) (iv), (v), P. 18, 19
private, contributions to, by employers, when admissible	P. 46.
private, not to be directly assessed to income-tax and super-tax	P. 3.
exemptions do not apply to.	P. 18.
Railway. (See Exemptions.)	

Public servant , definition of	S. 2 (13), P. 8.
disclosure of information by, prosecution	S. 54 (2), P. 8, 91.
indemnification of, for act done in good faith	S. 67.

Public utility , objects of, included in "Charitable purposes"	S. 4 (3) ad fin.
---	------------------

Railway administration , instructions for obtaining information from	P. 67.
---	--------

Railway books, power of income-tax authorities to call for	S. 37, P. 67.
Railway Provident Fund (see Exemptions).	
Railways, assessment of, allowances	P. 43.
renewal charges admissible	P. 43.
rolling stock, depreciation on, inadmissible	P. 43.
interest guaranteed by Secretary of State and payable in England—not liable	P. 14, Case No. 8.
Rate of Exchange, conversion of sterling profits	P. 47.
Rate of tax, Indian, meaning of	S. 49 (2) (b).
Rates of tax	Fin. Act.
; power of Governor General to reduce	S. 60, P. 16.
Rations	
Issued in kind, value of, to Military officers, exempt	P. 16 (25).
Money allowances paid in lieu of, exempt	P. 16 (25).
Receipt to be granted for tax paid	S. 62.
Receipts, casual, when exempt	S. 4 (3) (vii), P. 21.
Examples	P. 21.
“Receive”—Meaning of—	Case No. 20.
Receiver, liability of, to pay tax	S. 41, P. 82.
indemnification of	S. 65.
Receiver of rent in kind, sale of produce by, income from, exempt	P. 2.
Records, income-tax, Civil Court not to call for	S. 54 (1).
Recovery of penalties	S. 47, P. 87.
Recovery of tax, arrears of tax	S. 46, P. 87.
deduction of, from salary	S. 46 (5), P. 87.
deduction at source no bar to other methods of	S. 18 (8).
limitation for	S. 42 (1), Prov., S. 46 (7).
inapplicable in case of non-resident	S. 42 (1), Prov., P. 87.
non-resident, recovery from assets	S. 42 (1).
non-resident shareholders, super-tax, liability of principal officer of company	S. 57 (2), P. 93.

Recovery of tax—*contd.*

non-resident, super-tax, liability of fellow partners in registered firm	S. 57 (1), P. 93.
penalty for default	S. 46 (1).
promptitude in, importance of	P. 87.
suspension of, pending appeal, discretionary	S. 45, Prov., P. 87.
pending statement to High Court, forbidden	S. 66 (7), P. 87.
tax, when payable	S. 45, P. 87.

Rectification of mistake by Income-tax Officer	S. 35, P. 80.
assessee to show cause against enhancement	S. 35 (1), Prov.
Income-tax officer has no general power of review	S. 35 (1), P. 80.

Redemption of Government loan, premium on, not liable	P. 21, Illustration (4).
--	--------------------------

Reference to High Court (see High Court).	
Refund of fee deposited by applicant for reference to High Court	S. 66 (2), Prov.

Refund, application for	R. 36-40, P. 88.
limitation	S. 50, P. 88.
personal presentation unnecessary	R. 40, P. 88.
to owner of security	S. 48 (3), R. 37, 38, P. 10, 56, 58, 88.
in Indian States	P. 58.
to partner in registered firm	S. 48 (2), P. 9, 10, 52, 69, 88.
to person assessed on salary	S. 48 (3), P. 56.
to shareholder in company	S. 48 (1), R. 37, 38, P. 10, 60, 88.

Refunds, limitation	S. 50, P. 88.
to be obviated	P. 52, 56, 58, 88.

Regimental Mess or Band Fund, compulsory subscriptions to, Exempt	P. 16 (4).
--	------------

Registered Firm (see Firm, Registered).**Relief (see "Allowances," "Deductions from taxable income," "Double income-tax," "Exemptions")."**

Relief, marginal	S. 17, P. 55.
medical, included in charitable purposes	S. 4 (3) ad fin.
of poor, included in charitable purposes	S. 4 (3) ad fin.

Religious or charitable institutions, purposes and trusts (see "Exemptions," "Charitable institutions, purposes and trusts").

Rent (see "Allowances, in assessing business").

Rental value (see "Property, annual value").

Rental value, of business premises, inadmissible deduction P. 37.

Rent-free residences, value of, when taxable . . . P. 20.

Rent-(ground). (See "Allowances in assessing property.")

Rent-in-kind, sale of raw produce by receiver of, exempt P. 2.

Rents and Royalties, mining, assessment of income from, cesses not admissible deduction . . . P. 50, Case No. 6.
not income from business . . . Case No. 6.

Requisition (see Notices).

Reserves, for bad debts, equalisation of dividends, insurance, pension, provident funds, superannuation funds, sums placed to inadmissible deduction . . . P. 37, 42, 46.

for loss on, or depreciation of securities, etc., sum placed to by Insurance Company, admissible deduction . . . R. 30.

for unexpired risks, or outstanding liabilities, sum placed to by Insurance company, treated as expenditure . . R. 29, P. 100.

Return, of employees S. 21, R. 15—17, P. 61.
prosecution for failure to furnish . . . S. 51 (c).
to whom to be made P. 61.

Return of income, by person other than company . . S. 22 (2), R. 19, P. 63.
revised S. 22 (3).
by principal officer of company . . . S. 22 (1), R. 18, P. 62.
failure to furnish, basis of assessment S. 23 (f).
cancellation and re-assessment when cause shown . . S. 27, P. 64.
appeal against refusal to make S. 30 (1), P. 64, 75.

Return of income—*contd.*

- | | |
|--|---------------------------------|
| forfeiture of right of appeal | S. 30 (1), Prov., P. 61, 73. |
| Prosecution for | S. 51 (c), P. 64. |
| false return, penalty for | S. 28, P. 64, 65. |
| prosecution for | S. 52, P. 65, 75. |
| sanction of Assistant Commissioner | S. 53 (1), P. 65. |
| prosecution and levy of penalty on same facts barred | S. 28 (1), Prov., (2), P. 65. |
| importance of obtaining obligatory, on Income-tax officer to call for | P. 64, 75.
S. 22 (2), P. 64. |
| Returns, assessee himself must sign | P. 68. |
| income-tax officials should assist assessee to fill up | P. 64. |
| Review, Commissioner's powers of | S. 33, P. 22 (2), 78. |
| Assessee's right to be heard | S. 33 (2), Prov. |
| Commissioner's power to order further enquiry by subordinate officer | S. 33 (2), P. 78. |
| Income-tax Officer has not general power of | S. 35, P. 80. |
| Rules, power of Central Board of Revenue to make | S. 59, P. 22 (1), 94. |
| Salamis (premium for recognition of transfer of holding), not exempt | P. 2, Case No. 1. |
| Salaries (see "deduction of income-tax," "exemptions," "refunds"). | |
| definition of | S. 7 (1), P. 20, 23. |
| earned outside India, when taxable | P. 24. |
| examination fees, when not taxable under income from, included in income of year in which received | P. 23. |
| language rewards, when not taxable under | P. 23. |
| of officers lent to and paid by Indian States when liable | P. 24. |
| paid in United Kingdom, when exempt | P. 25. |
| paid outside British India, in India when liable | S. 7 (2), P. 1, 24. |
| partner's not admissible deduction | P. 37. |
| withheld under Court's order, taxable | P. 23. |
| Scholarships, exempt (see "Exemptions") | P. 16 (3), 17. |

Securities (see "Deduction of income-tax," "exemptions," "interest," "refunds").

appreciation of, treated as income to Insurance Company	R. 30.
depreciation or loss on	
sums placed to reserve for or written off by Insurance Company, admissible deductions	R. 30.
interest on loan for purchase of, permissible deduction, when	P. 26.
interest on tax free, included in total income	S. 16 (1), P. 26.
meaning of	P. 19, 26.

Securities and shares, forming part of capital,
 appreciation or depreciation of, not taken into account in calculating income

P. 43.

profit on sale of, forming part of reserve, not taxable

P. 43.

profits of speculation in, taxable

P. 43.

Set-off, of interest on loan, against income from securities

P. 26.

of loss under one head of income against profit under another

S. 24, P. 69.

no set-off, of loss under property

S. 9 (1), Prov., P. 34.

securities or shares—interest on borrowed money invested in — excess of over interest or dividend received — other taxable income

P. 69.

Set-off of tax, as alternative to refund, to persons assessed on salaries, and owners of securities

P. 56, 58, 88.

Shafts in mines, depreciation on

P. 43.

Shareholder (see Dividend).

Shares, cost of issuing, not admissible as business expense

P. 48.

premium on issue of, not liable to tax

P. 48.

Shares and securities (see Speculation).

Shipping companies, assessment of	S. 42 (1), R. 33, P. 84 (1).
British—assessment of.	P. 85.
Shipping, occasional—	
liability to tax of	S. 44-A.
owner or charterer when to be deemed to carry on business in British India	P. 86.
port clearance not to be granted until tax paid	S. 44-B.
profits and gains how to be determined	S. 44-B.
Sidings in Mines, depreciation on	P. 43.
Societes anonymes	P. 4.
Speculation, in house property, profits assessable	P. 21, Illustration (1).
in shares and securities, profits assess- able	P. 43.
Statement of case (see High Court).	
Stay of prosecution by Assistant Commissioner	S. 53 (2), P. 90.
Stay of recovery of tax (see “Recovery of tax, sus- pension of”).	
Sterling Companies, profits of, conversion method	P. 47.
Sterling debentures, interest on, when liable	P. 15.
Sterling securities, Government of India, interest on, when liable	P. 15.
Succession to business	S. 26, P. 71, 72.
Sugar, manufacture of, profits of, taxable	P. 2, Case No. 2.
Superannuation Funds, employers, contributions to, when an admissible deduction	P. 46.
Superannuation Reserves, sums placed to, when an admissible deduction	P. 46.
Super-tax, allowances admissible for super-tax (see Allowances).	
chargeable on income of individual, Hindu undivided family, company, unregistered firm or other association, not being a registered firm	S. 55, P. 9, 10, 92,
companies, taxable at flat rate	Fin. Act, P. 92,
exemptions from income-tax applicable to super-tax (see Exemptions).	

Super-tax—*contd.*

exemptions from income-tax inapplicable to super-tax (see Exemptions).

Firms, registered, not liable	S. 55, P. 9 (2), 92.
partners in, liable	S. 14 (2) (b), 58 (1), P. 9 (2), 92.
partners, non-resident, liability of resident partners for tax due on share of credit to be given for tax so deducted, in assessing agent	S. 57 (1), P. 93.
liability restricted to tax on share	S. 57 (3).
Firms, unregistered, liable as individuals	S. 57 (1), P. 93.
partners liable if firm not taxed	S. 55, P. 9 (2), 92.
partners not liable if firm taxed	S. 55, Prov., P. 51, 92.
Hindu Undivided Family, taxed as individual, member not taxable on share, whether family taxed or not	S. 55, Prov., P. 9 (2), 92.
shareholders in companies, liable on dividends	S. 14 (1), 16 (1), 60, P. 10, 51, 92.
principal officer of company to deduct tax on dividend of non-resident	S. 14 (2), 55, 58 (1), P. 92.
credit to be given for sum so deducted in assessing agent	S. 57 (2), P. 93.
refund not admissible	S. 57 (3).
tax, inadmissible deduction from taxable income	S. 48 (1), 58 (1), P. 92.
tax, payable direct, not by deduction (except in the case of non-resident shareholder)	P. 37.
total income, defined	S. 57 (2), 58 (2), P. 10.
	S. 56, P. 10, 92.

Suspension of collection (see "Recovery of tax, suspension of").

Tax (see "Allowances," "Deductions from tax," "Double income-tax").

Tax-free securities (see "Securities").

Tea—

profits from the manufacture of, taxable	P. 2, Case No. 3.
taxable profits—how to be determined	P. 2.

Total income, definition of, for income-tax S. 2 (15), 16, P. 10.

[for super-tax S. 56, P. 10, 92.

- Trade Commissioner, salary of, exempt . . . P. 16 (10).
- Tramp steamers (see " Shipping, Occasional ").
- Tramways, Electric, depreciation on . . . P. 43.
- Tramways in mines, depreciation on . . . P. 43.
- Treasury bills, tax not deducted from yield of . . P. 21, Illustration (4), 57.
- Trustee, liability of, for beneficiary . . . S. 40, P. 82.
 indemnification of . . . S. 65.
 may be called on to furnish list of benefi-
 ciaries . . . S. 38.
 (official). (See Official Trustee.)
- Trusts (see Charitable institutions, Charitable pur-
 poses) . . . P. 17.
- Trusts, mixed, enquiry into application of income . P. 17.
 proportion of expenses of manage-
 ment allowable . . . P. 17.
- Turn-over, assessment on basis of percentage on . R. 33, 34, P. 84.
- Unexpired risks, sums placed to reserve for, by
 Insurance Company, treated as Expendi-
 ture . . . R. 29, P. 100.
- United Kingdom, income-tax paid in, deduction
 inadmissible . . . P. 50, Case No. 7.
 income-tax, meaning of, and ex-
 cess profits duty . . . S. 49 (2) (c), P. 89.
- United Kingdom income-tax, relief in respect of
 double taxation . . . S. 49, P. 89.
- United Kingdom, leave allowance, salary or pen-
 sion or officers paid in, exempt . . . P. 16 (18), (20).
 of private employees, paid in, when exempt P. 25.
- Universities. (See Exemptions.)
- Urban areas, rent of vacant lands in, when liable
 to tax (under other sources) . . . P. 27.
- Uttarayan (illegal exaction), not agricultural in-
 come, not exempt . . . Case No. 1.
- Vacancies, allowance for . . . S. 9 (1) (vii), P. 33.
 inadmissible in respect of property re-
 served for owner's occupation . . . P. 33.

Vacant land (see “ Urban areas,” above).

Verifications, assessee himself must sign . . . P. 68.

Victoria Cross, allowance attached to, exempt . . . P. 16 (5).

Wasting assets, depreciation on, inadmissible . . . P. 43.

Witnesses, summoned under Section 37, scale of
diet money and travelling expenses . . . P. 66.

Women, married, separately assessable . . . P. 96.

Wound and injury pensions, and gratuities. (See
Exemptions.)

section 46. The issue of a notice of demand is not a proceeding for the purpose of this section.

The above remarks regarding recovery of tax apply also, under the provisions of section 47 to the recovery of any penalty imposed under section 25 (2), section 28 or section 46 (1).

88. *Refunds of Income-tax.* (Section 48.)—Refunds are necessitated owing to the system of taxation at the source, which occurs in the case of the tax on companies and on registered firms (section 48 (1) and (2)), and of deduction at the source, which occurs in the case of " interest on securities " and " salaries " (section 48 (3)). In both these cases the rate of tax appropriate to the " total income " of the recipient (the shareholder, partner, security-holder or salaried person) is not known at the time that the tax is assessed or deducted. As stated in paragraph 58, in order to simplify the procedure in connection with refunds section 18 (9) makes it obligatory upon the person deducting income-tax from " interest on securities " to issue to all security-holders a certificate specifying the amount of the tax deducted from the interest and the rate at which it has been deducted; and similarly section 20 (see paragraph 60) requires the principal officer of a company distributing dividends to issue to shareholders a certificate stating that the company has paid or will pay income-tax on the profits that are being distributed. These certificates (or in the case mentioned in paragraph 59, a certificate by a bank) must be accepted by Income-tax Officers as conclusive proof that tax has been paid.

For the reasons given in paragraph 60 the Income-tax Officer for purposes of refund in the case of dividends, has to assume that the dividends mentioned in the certificate were taxed at the maximum rate current on the date when the dividends were *declared*. In the case both of dividends and of interest on securities, the tax deducted has to be added to the " net " dividend or interest paid for the purpose of calculating both the " total income " of the applicant and the amount of refund due [see paragraph 54, and section 48 (1)].

Applications for refund under the provisions of rule 39 can now be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or, where he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which he ordinarily resides and such Income-tax Officers are required to give the refunds. The applications need no longer be made, as under previous rules, to the Income-tax Officer of the area in which the income-tax was paid. In cases where the applicant is not resident in British India, the application should be made to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was deducted.

The necessity for refunds of tax on Government securities can be avoided, by the procedure laid down in paragraph 58, in the case of persons who are either not liable to the tax or who have a taxable income which is sufficiently stable to justify the Income-tax Officer is assuming that the rate applicable to the total income is not likely to move from one grade to another. Again, as has been pointed out in preceding

